ENHANCING LABOUR MIGRATION GOVERNANCE IN KENYA

Assessment of the role of employers
in supporting migrant workers and the existing gaps

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By Dr. Luchetu Likaka, Consultant

November 11, 2024

FOREWORD

Labour migration continues to influence Kenya's economic, social, and political landscape, offering significant opportunities for employment, skills development, diaspora engagement, and economic growth. With over 4 million Kenyans living abroad and a growing inflow of migrant workers, migration has become an increasingly visible feature of our interconnected labour market. However, as this dynamic intensifies, so do the challenges, ranging from weak enforcement of recruitment regulations to inadequate protection of migrant workers. These realities call for a more structured, transparent, and inclusive approach to labour migration governance, where the role of employers is acknowledged and elevated.

This report, "Enhancing Labour Migration Governance in Kenya: Assessment of the Role of Employers in Supporting Migrant Workers and the Existing Gaps," provides critical insights into Kenya's labour migration governance from an employer's perspective. It highlights the multifaceted role of employers in promoting fair recruitment, supporting skills development, and ensuring the protection and inclusion of migrant workers into the labour market. At the same time, it sheds light on the persistent challenges in policy coherence, data management, enforcement mechanisms, and social protections that limit the effectiveness of current systems.

Employers, primarily through their representative organizations such as the Federation of Kenya Employers (FKE), play a central role in advancing rights-based and development-oriented labour migration. Their contribution is indispensable, influencing fair recruitment policies, championing decent work standards, and facilitating the training and reintegration of returnees. This report underlines the urgency of stronger partnerships between employers, private employment agencies (PrEAs), government institutions, and international organizations, particularly in shaping a future of migration governance that prioritizes dignity, safety, and economic opportunity.

Ms. Jacqueline Mugo
Executive Director & CEO,
Federation of Kenyan Employers (FKE)

Notably, the report also emphasizes the role of Private Employment Agencies (PrEAs) as intermediaries in the recruitment ecosystem. It highlights their potential and shortcomings, underscoring their need for their regulation to be grounded in the ILO's General Principles and Operational Guidelines for Fair Recruitment. Without robust regulation and alignment with fair recruitment practices, PrEAs risk undermining the rights and welfare of the very workers that they are meant to serve.In Kenya, most PEAs have not joined FKE to allow them to be guided by acceptable business ethics and standards.

I thank the International Labour Organization (ILO) through the Better Regional Migration Management (BRMM) Programme, generously supported by the Foreign, Commonwealth and Development Office (FCDO) of the United Kingdom, for its continued partnership and support in producing this study. I also appreciate the contributions from all participating stakeholders, including government agencies, returned migrant workers, and employer associations, whose insights made this assessment rich and reflective of Kenya's complex migration reality.

This report provides actionable recommendations for improving labour migration governance, particularly in regulations, stakeholder collaboration, labour market data systems, and PrEAs as well as employer engagement. It draws from national experiences and global best practices to offer a pathway for Kenya to build a more effective and fair migration governance that balances the needs of business with the fundamental rights of workers.

As FKE we are committed to championing these reforms. We believe that Kenya can and must transform its labour migration governance into a fair, future-focused, and globally competitive model. By doing so, we not only ensure better outcomes for migrant workers and their families but also position Kenya to fully harness the dividends of labour mobility in a rapidly evolving world of work.

Ms. Mugalla, Caroline Khamati
Director of the ILO Country Office for the United Republic of Tanzania, Burundi, Kenya, Rwanda and Uganda and the EAC

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We trust that the findings and recommendations outlined in this report will make a meaningful contribution to future policy decisions and strengthen labour migration governance in Kenya and beyond.

DISCLAIMER

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Abbreviations and acronyms

ASMAK	Association of Skilled Migrant Agencies of Kenya
AU	African Union
BAEC	Business Africa Employers Confederation
BLAs	Bilateral Labour Agreements
CoD	Country of Destination
COMESA	Common Market for East and Southern Africa
CoO	Country of Origin
COTU	Central Organization of Trade Unions
EAC	East African Community
EAEO	East African Employers Organization
EBMO	Employer Business Membership Organizations
ELRC	Employment and Labour Relations Court
FKE	Federation of Kenya Employers
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
IGAD	Inter-Governmental Authority on Development
ILO	International Labour Organization
IOM	International Organization for Migration
IT	Information Technology
KAPEA	Kenya Association of Private Employment Agencies
KII	Key Informant Interviews
KLMIS	Kenya Labour Market Information System
KNCCI	Kenya National Chamber of Commerce and Industry
LMIS	Labour Market Information Systems
NEA	National Employment Authority
PEAs	Private Employment Agencies
RPL/Q	Recognition of Prior Learning/Qualification
UAE	United Arab Emirates
UK	United Kingdom
USA	United States of America

EXECUTIVE SUMMARY

This report, titled *"Enhancing Labour Migration Governance in Kenya: Assessing Employers' Role and Identifying Gaps in Migrant Worker Support,"* presents a comprehensive analysis of Kenya's labour migration governance. It examines the role of employers and the critical gaps in the support system for migrant workers. Labour migration plays a vital role in Kenya's socio-economic development, providing significant opportunities while also presenting challenges. Effective governance frameworks are necessary to address these challenges.

The report begins by assessing Legal and Policy Frameworks on labour migration at the international, regional, and national levels. It highlights gaps in enforcement and provides recommendations for strengthening these frameworks to better safeguard the rights of migrant workers.

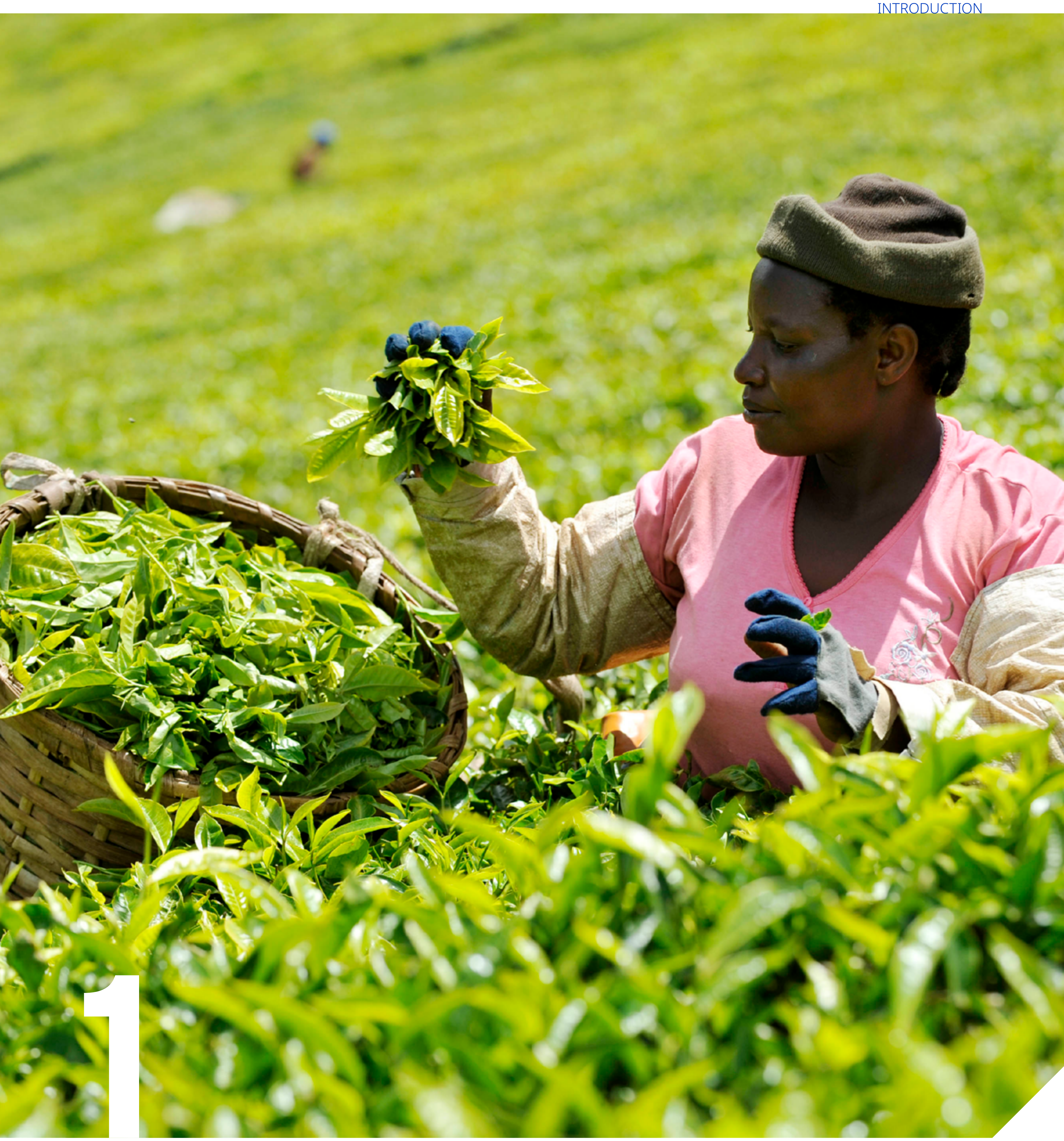
Next, the report examines Labour Migration Trends in Kenya, focusing on both emigration and immigration and their impact on various sectors of the economy. The findings emphasize the need for targeted governance mechanisms that address both economic and social factors driving migration.

A detailed analysis of the Employer Perspective provides insights into the role employers play in labour migration, including the benefits and challenges they face. Employers are pivotal in ensuring that migrant workers are treated fairly and integrated into the Kenyan labour market. However, gaps such as weak enforcement of recruitment regulations and inadequate support systems for migrant workers are identified.

The report also evaluates FKE Policies and Practices and the role of Private Recruitment Agencies (PrEAs) in managing labour migration. Both sections identify areas for improvement, particularly in ensuring fair recruitment practices and safeguarding the rights of migrant workers.

A Review of Employer and Business Membership Organizations (EBMOs) further elaborates on their contribution to labour migration governance and the need for better collaboration with government and international organizations.

Finally, a Literature Review of Good Practices from other countries offers insights into models that could be adapted to enhance Kenya's labour migration framework. The report concludes with actionable recommendations aimed at strengthening governance structures, enhancing employer accountability, and supporting the welfare of migrant workers.



1 INTRODUCTION

Woman working in a tea plantation, harvesting the leaves, Kenya. © Marcel Crozet / ILO

Labour migration is a critical aspect of global socio-economic development, shaping both the economies of sending and receiving countries. As a key driver of remittances and skills transfer, migration presents significant opportunities for economic growth, poverty alleviation, and social development. However, it also presents a complex set of challenges, especially in terms of governance, rights protection, and the recognition of migrant workers' contributions. In the Kenyan context, labour migration is an integral component of national economic development, with a substantial number of Kenyan workers seeking employment abroad while the country simultaneously attracts workers from across Africa. Managing these dynamics requires robust governance frameworks and active participation from multiple stakeholders, including employers, government bodies, and private recruitment agencies (PrEAs).

Under the ILO Conventions No. 97[1] (Migration for Employment Convention, 1949) and No. 143[2] (Migrant Workers Convention, 1975), a migrant worker is defined as a person who migrates from one country to another for the purpose of employment, rather than working for themselves. Globally, the International Labour Organization (ILO) and the United Nations (UN) have been at the forefront of establishing international conventions to regulate labour migration. The ILO's Migration for Employment Convention, 1949 (No. 97) and the Migrant Workers Convention, 1975 (No. 143) form the foundation for international labour migration governance, emphasizing the rights of migrant workers and promoting fair recruitment and fair treatment. The UN, through its Global Compact for Safe, Orderly and Regular Migration, reinforces these standards by advocating for the protection of migrants' human rights and promoting decent work. At the regional level, the African Union (AU) has crafted policies like the Migration Policy Framework for Africa to guide member states in managing migration within the continent, with a focus on improving governance, protecting migrants, and ensuring socio-economic benefits for both origin and destination countries.

In Kenya, labour migration has traditionally been viewed with concern, particularly through the lens of "brain drain." Historically, there has been a fear that emigration of highly skilled professionals would deplete the country’s talent pool and stifle local development. However, recent studies suggest this fear is unfounded in the current context. Kenya no longer experiences significant brain drain; instead, the primary challenge has shifted towards the "brain waste" phenomenon. Highly skilled Kenyan workers often find their qualifications and experience undervalued in destination countries, leading to employment in low-skilled jobs. This "brain waste" diminishes both their personal career growth and their economic contributions to the destination and origin economies. Moreover, upon their return to Kenya, many workers face difficulties reintegrating their foreign-acquired skills into the local job market due to the absence of recognition frameworks.

Labour migration in Kenya involves two main dimensions: emigration and immigration. Kenyan workers primarily emigrate to seek better employment opportunities abroad, motivated by disparities in wages, availability of jobs, and social conditions. Conversely, Kenya also attracts a considerable number of migrant workers from other African countries, contributing to sectors like agriculture, construction, and domestic work. Both economic and social factors—such as wage differentials, political stability, and employment prospects—drive these migration trends. As a result, Kenya’s labour migration governance frameworks must address these diverse influences to protect the rights and interests of both outbound and inbound workers.

Employers play a crucial role in the governance of labour migration. They are at the front of ensuring fair recruitment, fair treatment, and the proper integration of migrant workers into the workforce. However, the Kenyan system currently faces several challenges, including weak enforcement of recruitment regulations and inadequate support systems for migrant workers. Employers often lack sufficient guidance on how to treat migrant workers fairly, and existing policies are not always effectively implemented. As such, many workers are vulnerable to exploitation and mistreatment, which undermines their potential to contribute productively to the economy.

1. International Labour Organization (ILO). (1949). *Migration for Employment Convention (Revised), 1949 (No. 97).* Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C097
2. International Labour Organization (ILO). (1975). *Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).* Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C143

Private recruitment agencies (PrEAs) also have a major influence on the migration process. Acting as intermediaries between workers and employers, PrEAs are responsible for sourcing, selecting, and placing migrant workers. However, unfair recruitment practices, such as excessive fees or deceptive job descriptions, are prevalent in many instances, further exacerbating the vulnerabilities faced by migrant workers. Strengthening the regulation of these agencies is therefore vital to ensuring that migration remains a positive experience for workers and that their rights are fully protected. The Federation of Kenya Employers (FKE) and Employer and Business Membership Organizations (EBMOs) also play a key role in advocating for better policies and practices, promoting greater collaboration between the private sector, government, and international organizations.

Drawing on successful practices from other countries can offer valuable insights into how Kenya could enhance its labour migration governance framework. For example, countries that have implemented Recognition of Prior Learning (RPL) frameworks, such as South Africa and the Philippines, provide migrant workers with opportunities to have their skills formally recognized in both destination and origin countries. Adopting such frameworks in Kenya could help reduce instances of brain waste by ensuring that migrant workers' skills are appropriately utilized, thereby maximizing their contributions to both the Kenyan economy and the economies of their host countries.

This report highlights the need for stronger governance in Kenya’s labour migration system. Employers must be held accountable for ensuring fair treatment of migrant workers, while gaps in support systems and recruitment practices must be addressed. By learning from international best practices and fostering collaboration across stakeholders, Kenya can create a more equitable and efficient labour migration framework that maximizes the socio-economic benefits of migration while protecting the rights and dignity of migrant workers.

Labour migration plays a significant role in Kenya's economic landscape, contributing to both the workforce dynamics and the broader economy. Kenya, as a country, experiences both emigration and immigration of workers, which impacts various sectors and stakeholders within the economy.[3] Emigration involves Kenyan workers seeking opportunities abroad, often driven by factors such as unemployment, underemployment, better wages, career advancement, or unfavourable fiscal policies. Conversely, immigration brings foreign workers into Kenya, filling skill gaps, enhancing diversity, and supporting economic growth in sectors like construction, agriculture, hospitality, and healthcare.[4]

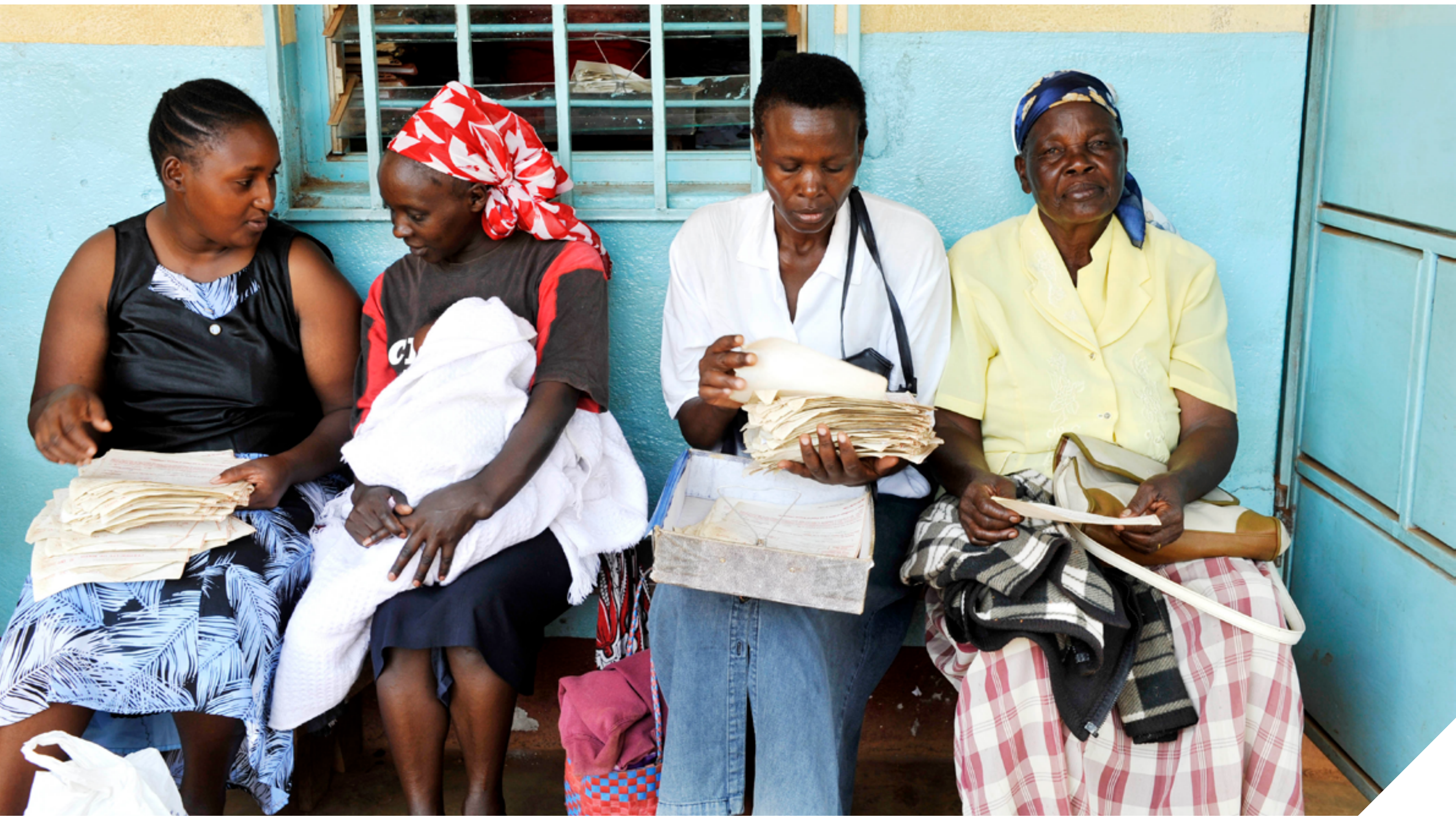
Employers in Kenya benefit from labour migration in several ways. Firstly, it helps alleviate skills shortages by providing access to specialized expertise that may not be readily available domestically. This is crucial in sectors requiring technical skills or advanced knowledge, such as IT, engineering, and healthcare. Additionally, migrant workers often bring diverse perspectives and innovative approaches, enriching workplace dynamics and fostering creativity within organizations. Employers also leverage migrant labour to meet seasonal demands in agriculture or tourism, ensuring continuity and efficiency in production and service delivery.

For workers, labour migration offers employment opportunities, higher wages for low-skilled workers, and career advancement opportunities for skilled workers. Many Kenyan workers seek employment opportunities abroad, where wages are often higher than they can earn domestically. This improves their living standard and allows them to send remittances back home, which contributes significantly to household income and human development, and the national Gross Domestic Product (GDP).[5] The remittances sent back to Kenya play a crucial role in supporting household income and contribute to human development indicators such as education and health. These remittances also form a substantial portion of Kenya's GDP.

3. World Bank. "Migration and Remittances: Recent Developments and Outlook." World Bank, 2023. See (https://www.worldbank.org/en/topic/migrationremittances).
4. International Organization for Migration (IOM). "Labour Migration in Kenya: Trends and Impact." IOM, 2022. See (https://www.iom.int/countries/kenya).
5. See Kenya National Bureau of Statistics (KNBS). "Economic Survey 2023." KNBS, 2023

Furthermore, migration provides workers with exposure to international practice experience, skills development, and networking opportunities that can enhance their long-term employability and prospects upon returning to Kenya.[6]

From an economic perspective, labour migration contributes to Kenya's GDP through remittances, which are a vital source of foreign exchange and support for local economies (see Central Bank of Kenya). https://www.centralbank.go.ke/diaspora-remittances/)[7] However, it is important to note that the economic perspective also includes the significant contribution of migrant workers within Kenya, who directly participate in various sectors of the economy. Their labour and skills support industries, drive productivity and enhance local economic development. While remittances contribute indirectly to GDP by stimulating consumption, investment, and poverty alleviation, the broader economic contributions of migrant workers themselves must also be recognized. Thus, the direct impact of migrant workers and the indirect role of remittances are acknowledged. Remittances from Kenyan migrants abroad serve as a stable source of income for many households, helping to reduce poverty levels, improve access to healthcare and education, and stimulate local businesses. Moreover, the influx of remittances contributes to the stability of Kenya's balance of payments, supporting overall economic resilience and mitigating external financial vulnerabilities. See the table on page 12.



Group of women waiting to be received at an administration office in Busia, Kenya. © Marcel Crozet / ILO

6. See International Labour Organization (ILO). "Skills for Employment: The Impact of Labour Migration. "Available https://www.ilo.org/publications/skills-employment-policy-brief-skills-migration-and-employment#:~:text=Skills%20for%20Employment%20Policy%20brief%20%E2%80%93%20Skills%20for%20Migration%20and%20Employment,-Facebook&text=This%20policy%20brief%20focuses%20on,market%20situation%20of%20migrant%20workers.

7. See https://www.centralbank.go.ke/diaspora-remittances/

▶**Table 1.**
Diaspora Remittances-2021-2024

Year	Month	North America	Europe	Rest of World	Total Remittances (USD '000)
2024	1	227,764.71	85,970.23	98,675.10	412,410.04
2024	2	216,261.02	68,506.15	101,166.51	385,933.68
2024	3	229,327.94	70,459.26	107,984.99	407,772.19
2024	4	214,547.83	74,874.09	107,874.65	397,296.56
2024	5	226,417.81	68,225.28	109,804.30	404,447.39
2024	6	206,630.55	62,654.47	102,307.78	371,592.80
2024	7	227,532.70	73,721.62	113,003.32	414,257.64
2023	1	212,010.98	59,838.87	77,541.98	349,391.83
2023	2	189,034.56	56,820.89	63,317.25	309,172.70
2023	3	212,079.84	66,569.69	78,330.94	356,980.47
2023	4	187,888.79	53,533.53	78,894.28	320,316.60
2023	5	195,185.70	62,490.54	94,429.56	352,105.80
2023	6	195,529.61	67,010.50	83,322.71	345,862.82
2023	7	217,951.73	69,959.78	90,141.50	378,053.01
2023	8	202,090.24	61,163.92	91,178.68	354,432.84
2023	9	194,744.39	66,816.87	78,882.91	340,444.18
2023	10	202,739.19	64,521.36	88,363.28	355,623.83
2023	11	203,179.64	61,640.97	90,145.57	354,966.18
2023	12	222,115.88	63,339.83	87,114.23	372,569.94
2022	1	215,528.88	57,828.80	65,362.07	338,719.75
2022	2	182,405.81	66,515.55	72,610.42	321,531.78
2022	3	222,531.25	64,222.13	76,828.28	363,581.66
2022	4	219,152.83	61,026.35	74,857.97	355,037.15

Year	Month	North America	Europe	Rest of World	Total Remittances (USD '000)
2022	5	203,366.18	60,537.34	75,779.71	339,683.23
2022	6	192,716.73	59,207.66	74,135.40	326,059.79
2022	7	192,757.71	55,940.13	70,706.45	319,404.29
2022	8	186,466.96	54,740.40	69,299.67	310,507.04
2022	9	192,844.04	55,491.70	69,645.25	317,980.99
2022	10	198,262.67	62,972.65	71,394.00	332,629.31
2022	11	200,404.95	67,185.24	77,858.47	345,448.67
2022	12	206,211.25	67,802.06	83,285.37	357,298.68
2021	1	177,413.63	46,034.91	54,898.11	278,346.65
2021	2	160,892.74	50,423.35	48,969.68	260,285.77
2021	3	171,144.37	63,775.42	55,851.40	290,771.19
2021	4	179,810.14	64,566.83	54,913.42	299,290.39
2021	5	190,748.28	68,658.03	56,395.50	315,801.81
2021	6	189,374.46	62,956.17	53,571.09	305,901.72
2021	7	206,435.23	71,285.77	58,990.49	336,711.49
2021	8	192,976.36	59,252.77	60,702.06	312,931.20
2021	9	199,697.86	53,208.89	56,897.68	309,804.43
2021	10	226,235.88	47,744.68	63,432.00	337,412.55
2021	11	215,252.99	42,509.66	62,310.97	320,073.62
2021	12	227,510.39	52,835.01	70,216.98	350,562.38

Source: CBK- https://www.centralbank.go.ke/diaspora-remittances/ as at 15.08.2024

Portrait of a construction worker in the city of Kisumu, Kenya. © Marcel Crozet / ILO

Labour migration also presents significant challenges that demand robust governance and thoughtful policy interventions. One such challenge is the brain drain, where highly skilled professionals migrate abroad, creating shortages in critical sectors like healthcare and education. Addressing this issue requires comprehensive strategies, such as the Recognition of Prior Learning (RPL) framework, introduced by the Government of Kenya. The concept of brain drain, where highly skilled professionals migrate from their home countries, primarily impacts the countries of origin, and the Recognition of Prior Learning (RPL) is typically applied in countries of destination. However, in the Kenyan context, RPL can still play a role in mitigating brain drain, particularly in the context of return migration. Through the formal mechanism to recognize the skills and competencies that migrant workers acquire abroad, RPL enhances their reintegration into the local labour market. This not only improves their employability upon returning to Kenya but also helps address critical sector shortages by tapping into the expertise and experiences they bring back. Thus, while RPL is a mechanism used in destination countries, its application in Kenya, particularly for returning migrants, can be an effective strategy in mitigating the long-term effects of brain drain.

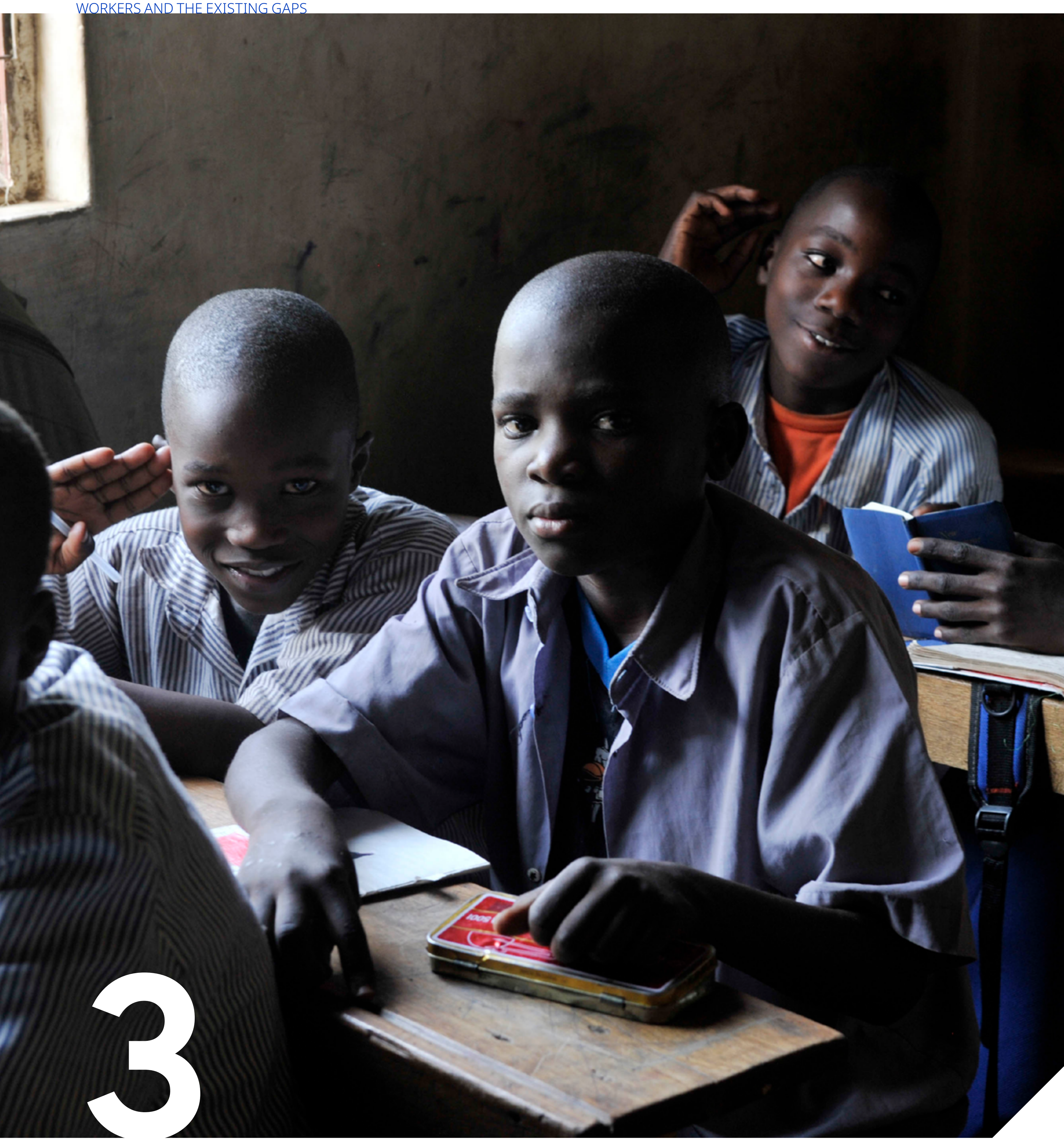
2 OBJECTIVES

Fisherman in his boat leaving the Suba Utajo Beach, Kenya. © Marcel Crozet / ILO

The primary objective of the study was to conduct a comprehensive assessment focusing on the role of employers in enhancing labour migration in Kenya. This includes a specific examination of the existing contributions made by the Federation of Kenya Employers (FKE) towards improving labour migration governance, and identifying existing gaps.

The assignment aims to achieve the following specific objectives:

- Conduct a review of legal and policy frameworks
- Analyze labour migration trends
- Identify employer perspectives
- Review FKE policies and practices that support labour migration
- Assess private recruitment agencies
- Review the role of EBMOs in labour migration management
- Conduct a literature review and identify good practices



3 METHODOLOGY

Young boys attending class at the J.N Kambarage Academy primary School in Suba, Kenya. © Marcel Crozet / ILO

3.1 Data Collection and Analytical Framework

This study employed a meticulously designed research methodology to gather comprehensive data through various channels. The primary data collection method involved conducting interviews with key informants based in Nairobi and Mombasa. These interviews were facilitated using semi-structured questionnaires, which allowed for both consistency in the data collected and flexibility to explore specific areas of interest in greater depth. The organizations targeted for these interviews included government ministries and agencies, international organizations, employers' and workers' organizations, return migrants workers, and civil society organizations (CSOs). This diverse selection of informants ensured a broad perspective on the issues under investigation.

To enhance the robustness of the study, the interviews were complemented by extensive desktop research. This involved reviewing existing literature, reports, and relevant documents to provide context and background information that supported the primary data. Additionally, some interviews were conducted via Google Meet and phone calls, which allowed the researchers to include perspectives from individuals who were not available for in-person meetings. This hybrid approach to data collection helped to overcome logistical challenges and ensured that a wide range of views were captured.

This study was conducted through fieldwork in Nairobi and Mombasa over four months, from April to July 2024. An analytical framework was employed to systematically analyze the data collected. This framework was designed to assess the extent to which national laws, policies, and practices align with international and regional instruments.

3.2 Study Consultation

The study consulted a wide range of stakeholders to gather a comprehensive understanding of labour migration governance in Kenya, with a particular focus on the role of employers and identifying gaps in migrant worker support. The respondents were selected and their involvement based on their involvement in labour migration governance, policymaking, and implementation. Key respondents included representatives from government ministries, international organizations, employers' associations, private recruitment agencies (PrEAs), and civil society organizations.

Interviews were conducted with the following key stakeholders:

1. **Federation of Kenya Employers (FKE)** - Provided insights into the challenges employers face in managing labour migration and the role of business in labour migration governance.

2. **National Employment Authority (NEA)** - Discussed regulatory oversight of private recruitment agencies and efforts to ensure fair recruitment.

3. **Association of Skilled Migrant Agencies of Kenya (ASMAK) and Kenya Association of Private Employment Agencies (KAPEA)** - Shared experiences on recruitment practices and the challenges migrant workers face during the recruitment process.

4. **State Department of Labour and Skills Development** - Provided insights into the national policies governing labour migration.

5. **International Labour Organization (ILO) and International Organization for Migration (IOM)** - Offered international perspectives on labour migration governance and best practices.

6. **Returnee Migrant Workers** - Gave firsthand accounts of their experiences abroad and the challenges faced both pre-departure and post-return.

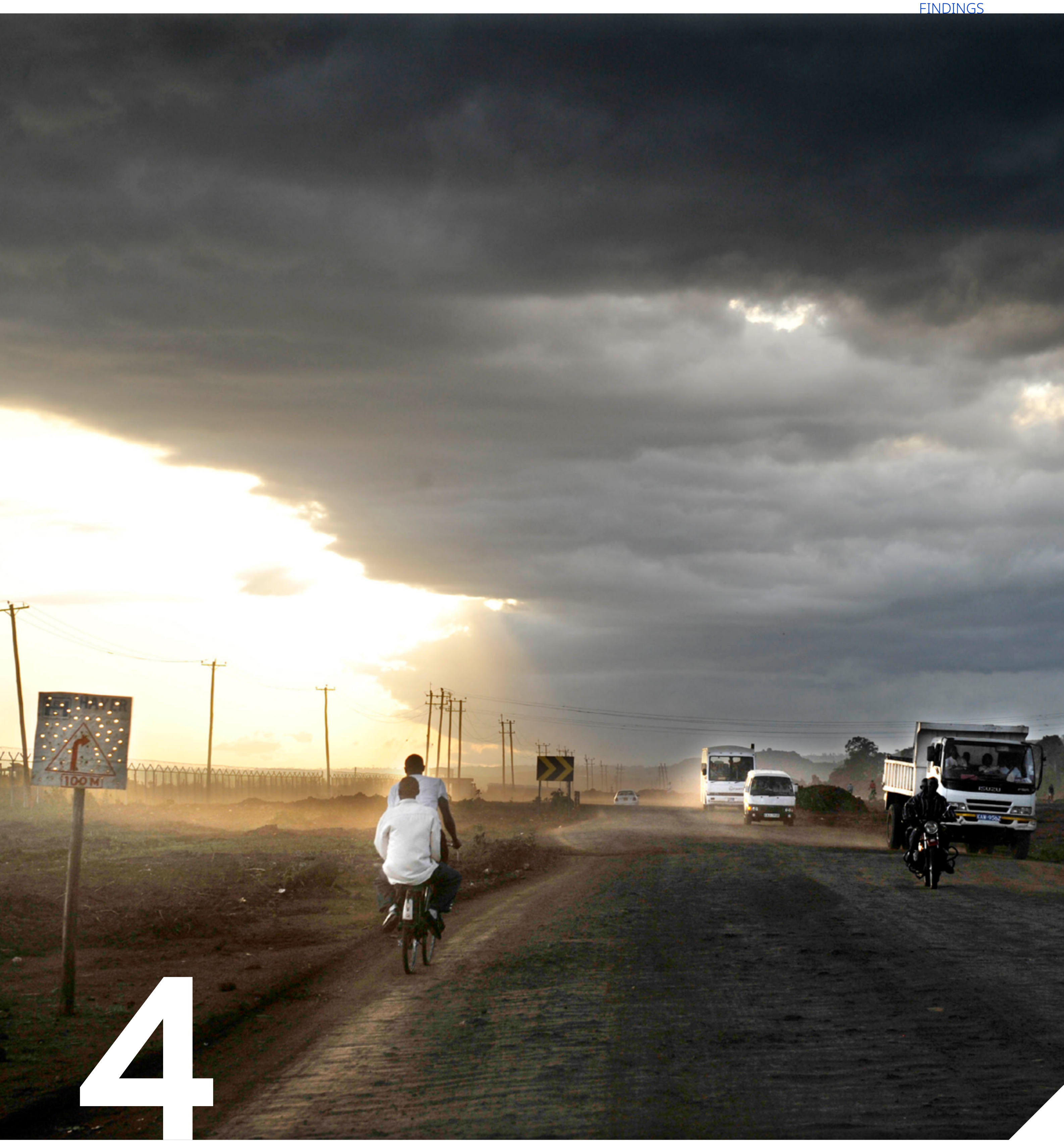
7. **Civil Society Organizations (CSOs)** - Highlighted areas of migrant worker vulnerabilities and the role of non-governmental actors in advocating for better protection mechanisms.

8. **Private Employers** - Shared their perspectives on the benefits and challenges of employing migrant workers and the role of fair recruitment.

3.3 Study Limitations

The study provides a robust foundation for future research and policymaking in enhancing labour migration governance in Kenya. Despite the comprehensive nature of this study, several limitations were encountered:

1. One of the main challenges was the lack of accurate and up-to-date data on migrant worker flows, especially regarding the numbers and demographics of outbound and inbound workers. This limitation affected the ability to make data-driven conclusions on certain aspects of labour migration trends.
2. The complexity of Kenya's labour migration legal and policy frameworks, which are often fragmented across various government agencies, posed challenges in gaining a clear, unified understanding of governance mechanisms. Coordination among stakeholders remains weak, affecting the ability to draw comprehensive conclusions on policy enforcement.
3. Although key informant interviews provided valuable insights, there was limited access to a broader sample of employers and migrant workers due to time and logistical constraints. As a result, some findings may not fully capture the diversity of experiences across different sectors and regions.
4. The study primarily focused on Nairobi and Mombasa, which may not reflect the labour migration dynamics in other regions of Kenya. Migrant workers from distinct parts of the country may face varying challenges that were not captured in the scope of this research.
5. Although the study included insights from international best practices, Kenya's specific context may limit the direct applicability of some global labour migration governance models. Further studies could explore how to tailor these best practices more effectively to the Kenyan context.



4

FINDINGS

Stormy sky on the road to Kisumu (Kenya). © Marcel Crozet / ILO

4.1 Legal and Policy Frameworks on Labour Migration

4.1.1 International Level

At the international level, Kenya has ratified several important International Labour Organization (ILO) conventions aimed at protecting the rights of migrant workers and regulating labour migration. Key ratifications include:

1. ILO Convention No. 97 (Migration for Employment Convention, Revised 1949): Ratified by Kenya in 1965. This convention promotes cooperation between countries to manage labour migration, particularly for employment purposes. Kenya has incorporated the principles of this convention into national legislation through the Employment Act of 2007 and the Labour Institutions Act of 2007 which regulate the recruitment process and protect the rights of migrant workers.

2. ILO Convention No. 143 (Migrant Workers (Supplementary Provisions) Convention, 1975): Kenya ratified it in 1979. It provides additional protection for migrant workers and their families, covering aspects such as recruitment, employment conditions, and social security.

3. ILO Convention No. 138 (Minimum Age Convention, 1973): Ratified in 1979. This convention aims to abolish child labour by setting a minimum age for employment, reflected in Kenya's Employment Act, 2007, which prohibits child labour and sets strict conditions for employing minors.

4. ILO Convention No. 181 (Private Employment Agencies Convention, 1997): Kenya has not ratified it yet. This convention would set standards for regulating private employment agencies, ensuring fair recruitment practices, and protecting workers from exploitation. Its absence creates a gap in regulating recruitment agencies that play a critical role in labour migration.

5. United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990: Kenya has not ratified this UN convention, which would significantly enhance protections for migrant workers and their families. This non-ratification hinders Kenya’s ability to fully align with international human rights standards, potentially leaving migrant workers vulnerable to exploitation and abuse.

4.1.2 Regional Level

At the regional level, Kenya participates in various frameworks aimed at managing labour migration across African countries. The regional frameworks include:

1. East African Community (EAC) Common Market Protocol: Facilitates the free movement of workers across EAC member states. The protocol emphasizes the elimination of visa requirements and the harmonization of labour policies. While this promotes labour mobility within the region, implementation challenges remain.

2. African Union (AU) Migration Policy Framework for Africa: Kenya has adopted principles from this framework into its National Diaspora Policy and National Labour Migration Policy, focusing on protecting migrant workers’ rights and addressing irregular migration.

3. Inter-Governmental Authority on Development (IGAD) Free Movement of Persons Protocol: Signed in 2024, this protocol aims to regulate cross-border movements within the IGAD region, ensuring safe and orderly migration. It particularly focuses on herders, natural resource management, and conflict prevention.

4. Common Market for East and Southern Africa (COMESA) Protocol on Free Movement of Persons, Labour, Services, and the Right of Establishment and Residence (2001): Kenya’s commitment to economic integration includes gradual relaxation of visa requirements, but progress toward full implementation remains slow.

4.1.3 National Level

Kenya's labour migration management at the national level is based on several key laws and policies:

1. Constitution of Kenya, 2010[8]: Guarantees the rights of all persons, including migrant workers, to fair treatment, non-discrimination, and access to social and economic rights.
2. Employment Act, 2007[9]: Provides comprehensive protections for all workers, including migrant workers, in areas such as recruitment, working conditions, and rights to fair treatment.
3. National Labour Migration Policy, 2023[10]: Provides a framework for the management of labour migration, focusing on addressing brain drain, ensuring fair recruitment, and promoting the reintegration of return migrant workers, including mechanisms like the Recognition of Prior Learning (RPL).
4. National Employment Authority (NEA) Act, 2016[11]: Established the NEA to regulate the recruitment and placement of Kenyan workers abroad, ensuring fair recruitment practices and protecting the rights of migrant workers.
5. Counter-Trafficking in Persons Act, 2010[12]: Focuses on combating human trafficking, particularly concerning vulnerable groups such as migrant workers.
6. National Diaspora Policy (2024)[13]: Encourages engagement with the Kenyan diaspora, facilitating remittances, investment, and skills transfer and providing protection for Kenyans working abroad.
7. Vision 2030[14]: Kenya's long-term development blueprint includes strategies for managing labour migration to optimize the benefits for economic development.
8. Kenya Kwanza Manifesto (2022)[15]: The current government's manifesto emphasizes creating employment opportunities for Kenyans, improving labour migration policies, and increasing protections for migrant workers abroad.

8. http://www.parliament.go.ke/sites/default/files/2023-03/The_Constitution_of_Kenya_2010.pdf
9. https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/EmploymentAct_Cap226-No11of2007_01.pdf
10.
11. https://www.labour.go.ke/node/301
12. https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Counter-TraffickinginPersonsAct_No8of2010.pdf
13. https://mfa.go.ke/wp-content/uploads/2024/05/Draft-Diaspora-Policy-2024-23.05.2024.pdf
14. https://vision2030.go.ke/
15. https://africacheck.org/sites/default/files/media/documents/2022-08/Kenya%20Kwanza%20UDA%20Manifesto%202022.pdf

▶Table 2.
Gaps in Legal Frameworks on Labour Migration in Kenya

Legal Instrument	Gap	Recommendation
ILO Convention No. 181 (Private Employment Agencies Convention)	Not ratified, resulting in a lack of regulation for private recruitment agencies, leading to exploitation and unfair practices.	Ratify and domesticate ILO Convention No. 181 to regulate private employment agencies, ensuring fair recruitment and protection of workers.
UN International Convention on Migrant Workers (1990)	Not ratified, limiting the protection of migrant workers' families and their access to rights.	Consider ratification to align with global human rights standards for the comprehensive protection of migrant workers and their families.
National Diaspora Policy (2014)	Lack of comprehensive reintegration support for returning Kenyan diaspora members.	Expand the policy to include social, economic, and cultural reintegration programmes for returning migrants.
National Labour Migration Policy (2020)	Focuses primarily on recruitment and employment phases, lacking comprehensive post-arrival support and reintegration frameworks.	Amend the policy to include provisions for cultural orientation, access to social services, and reintegration support for migrant workers.
EAC Common Market Protocol	Incomplete implementation of free movement protocols, leading to inconsistencies in labour mobility and treatment across EAC countries.	Strengthen the implementation and harmonization of labour mobility frameworks across EAC countries.
National Employment Authority (NEA) Act, 2016	Limited resources and enforcement capacity, leading to gaps in regulating recruitment agencies and protecting migrant workers.	Allocate additional resources to the NEA and enhance its capacity to monitor and regulate recruitment agencies.

4.1.4 Recommendations

1. Kenya should ratify ILO Convention No. 181 and the UN International Convention on Migrant Workers to enhance protections for migrant workers, especially in the recruitment process and the recognition of migrant families' rights.
2. Kenya should prioritize the full implementation of the EAC Common Market Protocol and COMESA Free Movement Protocol to facilitate greater regional labour mobility and ensure fair treatment of workers.
3. Enhanced National Legislation and Policies:
   - Revise the National Diaspora Policy to provide more comprehensive reintegration support for returning migrants.
   - Amend the National Labour Migration Policy to include guidelines for post-arrival integration, social services, and ongoing support for migrant workers.
   - Expand the NEA's capacity to regulate recruitment agencies more effectively and prevent exploitation.

4. Kenya should enhance bilateral labour agreements with key destination countries, focusing on fair recruitment, fair employment conditions, and robust dispute resolution mechanisms.

5. To ensure more effective enforcement of labour migration laws and better protection of migrant workers, coordination between the State Department for of Labour and Skills Development, NEA, and the Directorate of Immigration should be improved.

4.2 Labour Migration Trends in Kenya: An Employer Perspective

4.2.1 Current Situation

Labour migration in Kenya is largely driven by high unemployment rates, socio-economic disparities, and the availability of better opportunities abroad. The Middle East, Europe, and North America have been major destination regions, with a sizable proportion of Kenyan migrant workers being employed in low-skilled sectors such as domestic work, security services, construction, and hospitality. The migration landscape has seen various regulatory and policy interventions, including the establishment of legal frameworks to regulate the recruitment of migrant workers. Key stakeholders include the Government of Kenya, the Federation of Kenya Employers (FKE), and Private Employment Agencies (PEAs).

Key Instruments:

- **Kenya's National Labour Migration Policy (2023):** Aimed at protecting the rights of Kenyan migrant workers while improving labour migration management.
- **Bilateral Labour Agreements (BLAs):** Kenya has signed several BLAs with countries like Qatar, Saudi Arabia, Germany, and the UAE to regulate migrant worker recruitment and safeguard their rights.
- **International Labour Organization (ILO) Conventions:** Kenya is a signatory to various ILO conventions, including the Domestic Workers Convention (C189) which she ratified in October 2021, which provides protection for migrant domestic workers.
- **Federation of Kenya Employers (FKE) Reports:** FKE conducts research and produces reports assessing labour migration trends, challenges, and the role of PrEAs in labour migration.
- **State Department for Labour and Skills Development Reports:** The Ministry publishes data on outbound labour migration, working conditions, and recruitment agency licensing practices.

4.2.2 Gaps

Table 3 below provides a breakdown of the key gaps identified in the labour migration framework in Kenya, focusing on governance, enforcement, and the protection of migrant workers.

▶Table 3.
Gaps in governance, enforcement, and the protection of migrant workers

Issue	Gaps Identified
Policy Implementation	• Incomplete implementation of the National Labour Migration Policy. • Lack of comprehensive enforcement mechanisms for Bilateral Labour Agreements (BLAs).
Private Employment Agencies (PEAs)	• Insufficient oversight of Private Employment Agencies (PEAs). • Limited capacity-building opportunities for PEAs. • Exploitation and unfair practices by some rogue agencies.
Regulation and Licensing	• Fragmented licensing process for PrEAs. • Inadequate coordination among government bodies overseeing PrEAs. • Insufficient monitoring of recruitment practices.
Migrant Worker Protections	• Limited protection for migrant domestic workers. • Difficulty tracking and monitoring the welfare of workers abroad. • Poor enforcement of contracts and working conditions.
Labour Agreements (BLAs)	• Limited number of signed BLAs, particularly in key migrant destination countries. • Weak enforcement and monitoring of existing agreements.
Data Management	• Lack of comprehensive data on labour migration flows. • Inadequate tracking of migrant worker numbers, sectors, and destination countries.
Awareness and Training	• Limited awareness among employers and workers about legal migration channels. • Inadequate pre-departure training for migrant workers, particularly on rights and obligations.

4.2.3 Recommendations

▶Table 4.
Recommendations for Labour Migration Governance

Area	Recommendations
Policy Implementation	• Fully implement the National Labour Migration Policy with defined timelines, including: Reintegration and social protection for returnees, development of Recognition of Prior Learning (RPL) framework, development of Fair recruitment practices and Policy Awareness and Capacity Building • Develop a coordinated and cross-sectoral enforcement mechanism to oversee BLAs.
Private Employment Agencies (PEAs)	• Strengthen the licensing and oversight of PrEAs through regular audits and capacity-building programmes. • Encourage PEAs to adopt ethical recruitment practices and follow international standards such as ILO guidelines. • Introduce a rating system for PEAs to enhance accountability and transparency.
Regulation and Licensing	• Simplify and streamline the licensing process for PEAs • Enhance inter-agency collaboration among the State Department for Labour, Federation of Kenya Employers (FKE), and National Employment Authority (NEA) to improve oversight of recruitment practices.
Migrant Worker Protections	• Improve pre-departure training programmes to educate workers on their rights, obligations, and working conditions in destination countries. • Strengthen consular support in key destination countries to ensure better protection and dispute resolution for migrant workers.
Labour Agreements (BLAs)	• Expand the signing of BLAs with more destination countries, ensuring they cover a wider range of sectors, including domestic work and construction. • Establish a monitoring and evaluation framework for BLAs to ensure compliance by both sending and receiving countries.
Data Management	• Develop a comprehensive database to track migrant workers, PrEAs, and recruitment trends. • Utilize data analytics to inform policy adjustments and identify emerging trends in labour migration.
Awareness and Training	• Increase awareness campaigns targeting employers and potential migrant workers about legal recruitment channels and the risks of irregular migration. • Develop tailored training programmes for specific sectors to enhance the skills of Kenyan workers before departure, improving their competitiveness in international labour markets.

The Positive Role of Private Employment Agencies (PEAs)

Private Employment Agencies play a crucial role in facilitating labour migration by connecting Kenyan workers with employment opportunities abroad. Some of the contributions of PEAs include:

- Bridging the gap between Kenyan job seekers and international employers, thereby facilitating access to jobs that would otherwise be inaccessible.
- Assessing the skills of workers and aligning them with international job markets, ensuring that labour migration meets both demand and supply needs.
- Providing support services, such as visa processing, travel arrangements, and even dispute resolution between migrant workers and employers.
- Ensuring that Kenyan workers are protected through contracts that specify fair wages and working conditions, in accordance with BLAs.

However, the positive impact of PEAs depends significantly on effective regulation, oversight, and adherence to fair recruitment practices. Kenya's labour migration trends, from an employer's perspective, reveal an increasingly organized, yet fragmented system that requires improved regulatory frameworks, enforcement mechanisms, and cooperation between public and private sectors. By addressing identified gaps and strengthening the role of PEAs through ethical recruitment, the country can maximize the benefits of labour migration while safeguarding the rights and welfare of migrant workers. A collaborative approach involving the government, employers, and PEAs is essential to improving the overall management of labour migration, protecting Kenyan migrant workers, and ensuring long-term sustainability in the labour migration process.

4.3 Labour Migration-Related Priorities from Kenya Employers' Perspective

Kenya's labour migration landscape is crucial for its economic development, offering opportunities for skill matching, employment, and economic diversification. However, employers face significant challenges in navigating the legal, regulatory, and operational frameworks governing labour migration. This analysis explores the current situation, identifies gaps, and provides recommendations based on the role of employers in labour migration and governance, specifically under FKE's advocacy.

4.3.1 Current Situation

From an employer's perspective, labour migration is key to addressing Kenya's skill shortages and enhancing productivity. The FKE has been vocal in advocating for a legal and operational environment that facilitates the smooth and ethical migration of labour, especially in sectors like construction, healthcare, technology, and hospitality. The emphasis is on a predictable and flexible framework that balances labour mobility with market demands. Some of the key considerations for employers include:

- Employers are experiencing skill gaps in critical sectors, and migrant workers are seen as a viable solution to address these gaps.
- PrEAs play a critical role in facilitating labour mobility, but concerns over unfair practices, such as high recruitment fees and lack of transparency, persist.

- Employers face bureaucratic challenges, particularly with fragmented and inconsistent regulations governing labour migration, leading to inefficiencies in hiring and protecting migrant workers.
- The FKE advocates for removing barriers, such as complex work permit systems and prohibitive fees, as these hinder the efficient movement of skilled workers.

Employers, particularly through FKE, have a crucial role in shaping the future of labour migration in Kenya. Their engagement in governance, policy advocacy, and operational improvements will be key in ensuring that migrant workers can contribute positively to Kenya's economy while being protected and valued.

Key Roles of Employers:

- Advocating for Policy Reforms: Employers can use platforms like FKE to push for predictable and transparent migration frameworks, ensuring that policies align with market needs and enable the smooth mobility of labour.
- Promoting Fair Recruitment: By working closely with PrEAs, employers can help establish fair and ethical recruitment processes, ensuring that migrant workers are not exploited and have access to decent working conditions.
- Investing in Skills Development: Employers can collaborate with the government and educational institutions to develop training programmes that address both local and international labour market demands, ensuring that migrant workers have the right skills for available jobs.
- Supporting Social Integration: Employers can foster inclusive work environments that support the integration of migrant workers, helping them adapt socially and culturally to the local community, which enhances their overall productivity and well-being.

Key Instruments and Reports Informing the Situation:

- National Labour Migration Policy (2023): This policy seeks to establish a comprehensive framework for managing labour migration in Kenya but has yet to be fully implemented.
- Federation of Kenya Employers (FKE) Reports: These reports highlight the challenges faced by employers and migrant workers and advocate for legal reforms and fair recruitment.
- Private Employment Agencies (PrEAs) Guidelines: While these guidelines aim to regulate the recruitment process, implementation remains inconsistent.
- Bilateral Labour Agreements (BLAs): These agreements with destination countries aim to safeguard migrant workers, but their enforcement remains weak.

4.3.2 Gaps

Below is a table summarizing the key gaps in labour migration governance, with a focus on the role of employers and the challenges they face.

▶Table 5.
Gaps in Labour Migration Governance

Area	Gaps Identified
Regulatory Framework	• Inconsistent and fragmented regulations for labour migration hinder effective governance. • Conflicting rules between ministries of labour and immigration create difficulties for employers to hire skilled workers efficiently.
Recruitment Practices	• Some PrEAs engage in unfair practices, such as excessive recruitment fees and misrepresentation of job offers. • Lack of clear guidelines on fair recruitment standards and enforcement mechanisms undermines efforts to protect migrant workers.
Skills Recognition	• Inadequate recognition of skills and qualifications obtained abroad limits opportunities for migrant workers. • Limited programmes to upskill migrant workers before they join the workforce in destination countries affect their productivity.
Data Management	• Poor data collection and analysis on migrant worker demographics, skill levels, and employment patterns. • Lack of reliable data undermines policy formulation and programme implementation.
Protection of Migrant Workers	• Insufficient protection for migrant workers against occupational hazards and exploitation compromises their well-being. • Weak contract enforcement, leading to violations of labour rights in destination countries.
Social Integration	• Inadequate support systems for integrating migrant workers into local communities affect social cohesion. • Limited access to language training and cultural adaptation programmes affects productivity and social integration.

4.3.3. Recommendations

To improve labour migration governance and address the challenges identified, the following recommendations are proposed, based on consultations and interviews, focusing on the role of employers and the private sector in ensuring ethical, efficient, and productive migration pathways.

▶Table 6.
Recommendations of Labour migration Governance

Area	Recommendations
Regulatory Framework	• Simplify and harmonize the legal frameworks between the State Department for Labour and Skills Development and Immigration to remove bureaucratic barriers. • Reduce fees and simplify the application process to encourage skilled labour mobility.
Recruitment Practices	• Implement stricter licensing and monitoring of recruitment agencies to ensure fair practices, such as fair recruitment fees and accurate job descriptions. • Encourage transparency and accountability by developing a rating system for agencies based on their ethical standards and compliance.
Skills Recognition	• Develop regional and international agreements for the recognition of skills and qualifications obtained abroad, facilitating smoother integration into the workforce. • Provide pre-departure training that aligns with the skills needed in destination countries, with a focus on technical and language skills.
Data Management	• Establish a centralized, reliable database for tracking migrant workers' demographics, skills, and employment patterns, aiding in data-driven policy decisions. • Promote partnerships with government agencies, NGOs, and international organizations for improved data sharing and analysis.
Protection of Migrant Workers	• Ensure that Kenyan embassies in destination countries are equipped to manage migrant worker grievances, particularly regarding contract enforcement and working conditions. • Ensure that contracts for migrant workers are enforceable in both Kenya and the destination countries, with clear terms on wages, working conditions, and rest periods.
Social Integration	• Implement comprehensive programmes that provide migrant workers with language training, cultural competence, and social adaptation support to improve their integration into local communities. • Encourage employers to adopt diversity and inclusion policies that support the integration of migrant workers, fostering a positive work environment.

4.3.4 National Labour Migration Policy

The National Labour Migration Policy (NLMP) in Kenya provides a comprehensive framework for managing labour migration. The policy balances the needs and rights of both migrant workers and employers, streamlining the recruitment process, protecting migrant workers, and ensuring employers benefit from a regulated, fair, and efficient labour migration system. However, despite its significant benefits, the National Labour Migration Policy (NLMP) has several gaps that hinder its full potential. This section examines the NLMP's support for employers and migrant workers, identifies the existing gaps, and proposes recommendations to address these challenges.

How the NLMP Supports Employers and Migrant Workers

1. **Facilitating the Recruitment Process:** The NLMP simplifies the recruitment of migrant workers by establishing clear guidelines and procedures. It mandates the use of registered Private Employment Agencies (PEAs) to ensure transparency and legality in the recruitment process. This protects employers from illegal recruitment practices and guarantees that they hire qualified workers who meet the standards required by the Kenyan labour market (Government of Kenya, 2020).

2. **Ensuring the Availability of Skilled Labour:** The NLMP helps employers address skills shortages by accessing a broader pool of workers with critical skills that may not be readily available in the domestic market. This is particularly important in sectors like healthcare, construction, and technology, where the demand for skilled labour often exceeds the supply of local workers. By promoting labour mobility, the NLMP supports employers in meeting their operational needs, which can drive economic growth and competitiveness (International Labour Organization, 2022).

3. **Protecting Migrant Workers' Rights:** For migrant workers, the NLMP provides legal protection against exploitation, abuse, and unfair treatment. It outlines the rights and responsibilities of migrant workers, ensuring they receive fair wages, proper working conditions, and access to social protection. By safeguarding workers' rights, the NLMP indirectly benefits employers, as it fosters a more stable and motivated workforce, reducing turnover and promoting productivity. The policy emphasizes fair recruitment practices, ensuring workers are not subjected to exorbitant fees or fraudulent contracts, which contributes to creating a more sustainable labour migration environment (Federation of Kenya Employers, 2021).

4. **Supporting Skills Development and Training:** The NLMP encourages training programmes to improve local and migrant workers, helping employers access a more capable and adaptable workforce. By promoting partnerships between employers, vocational training institutions, and government agencies, the policy aims to enhance workers' employability. This addresses the skills gap in key industries, providing employers with a ready supply of workers equipped with necessary qualifications and competencies (Ministry of Labour and Social Protection, 2020).

Gaps in the NLMP

1. **Limited Employer Involvement in Policy Development:** The NLMP regulates labour migration, but employers' involvement in its development and implementation is limited. Employers are key stakeholders in the labour market, and their input is crucial for creating policies that align with business needs. However, many employers feel that their role in shaping the policy is minimal, resulting in regulations that may not fully address the challenges they face, such as recruitment delays or the need for flexible employment arrangements (Federation of Kenya Employers, 2021).

2. **Lack of a Comprehensive Labour Market Information System (LMIS):** A critical gap in the NLMP is the absence of a fully functional Labour Market Information System (LMIS). The LMIS provides real-time data on labour market trends, skills shortages, and migration flows. Without accurate and timely information, employers struggle to plan for future workforce needs and identify emerging skill gaps. Migrant workers are unable to access up-to-date information on job opportunities and requirements, which can result in mismatches between available jobs and the skills of workers (International Labour Organization, 2022).

3. **Inadequate Enforcement of Labour Standards:** Although the NLMP outlines legal protections for migrant workers, enforcement mechanisms remain weak. Many migrant workers face exploitation, particularly in informal sectors where labour regulations are harder to monitor. Employers who fail to comply with labour standards may go unpunished, leading to a lack of accountability and undermining the policy's objectives. The absence of effective monitoring systems and enforcement agencies makes it difficult to ensure employers adhere to fair recruitment practices and provide fair working conditions (Government of Kenya, 2020).

4. **Mismatch Between Skills Supply and Demand:** The NLMP focuses on addressing skills shortages but Kenya's education and training systems don't always align with employers'needs. Many industries face a persistent mismatch between available skills and those required by employers. This gap leads to underemployment, where migrant workers may be overqualified or underqualified for their roles. Employers face challenges recruiting workers with the right skill sets, affecting productivity and profitability (Ministry of Labour and Social Protection, 2020).

Recommendations

1. **Enhance Employer Participation in Policy Formulation:** To address the limited involvement of employers in the NLMP, the government should establish formal mechanisms for employer consultation in labour migration policymaking. This can include the formation of advisory committees or working groups composed of representatives from various industries, as well as regular consultations and feedback mechanisms. Engaging employers in the policymaking process ensures that the policy reflects their needs and challenges, leading to more effective implementation.
2. **Develop a Robust Labour Market Information System (LMIS):** Invest in the development of a comprehensive LMIS that integrates data from both the domestic and international labour markets. The LMIS should be accessible to employers, migrant workers, and policymakers, providing real-time information on job vacancies, skills requirements, and migration trends, accessible to employers, migrant workers, and policymakers. By doing so, employers can effectively plan for their workforce needs, while migrant workers can access relevant job opportunities, ultimately enhancing their employability and reducing skills mismatches.
3. **Strengthen Enforcement Mechanisms:** To protect migrant workers from exploitation, the government should prioritize enforcing labour standards. This can be achieved by increasing the capacity of labour inspection agencies, establishing stronger penalties for non-compliance, including fines, license revocation, or suspension of operations. Employers who violate labour laws must face sanctions, creating a deterrent effect and ensuring migrant workers protection.
4. **Promote Skills Development and Alignment with Industry Needs:** The government, in partnership with employers and educational institutions, should create develop targeted training programmes aligned with key industries' needs. These programmes should focus on critical skills that are in short supply, such as digital literacy, healthcare, and technical skills. Employers should invest in upskilling and reskilling programmes to ensure their workforceremains competitive in a rapidly changing labour market.

4.3.5 Critical Skills

The current situation of critical skills in Kenya is characterized by a significant mismatch between the demand and supply of skills, which presents major challenges for both employers and the broader economy. While certain sectors such as healthcare, information technology, and construction are growing rapidly, there is a shortage of workers with the necessary skills to fill key roles. This shortage has led to increased reliance on foreign labour, especially in sectors requiring specialized skills. Despite efforts by the government to address these shortages, there remain notable gaps in the country's labour migration and skills development frameworks.

Current Situation of Critical Skills in Kenya

Kenya's economy is evolving rapidly, with sectors like healthcare, digital technology, construction, and manufacturing driving growth. However, a shortage of critical skills in these sectors hinders industry demands. For instance, the healthcare sector faces a persistent shortage of nurses and specialized medical professionals. Similarly, the technology sector demands professionals skilled in software development, data analysis, and cybersecurity (Federation of Kenya Employers, 2021). The country's growing infrastructure projects require workers skilled in construction, engineering, and project management, but the current workforce is insufficient to meet this demand (Ministry of Labour and Social Protection, 2020).

ILO tracer study field researcher M. Evans (left) interviewing former ILO beneficiaries in Kisumu, Kenya. © Marcel Crozet / ILO

The shortage has led to increased labour migration, as Kenyan employers look to recruit foreign workers with necessary qualifications. However, this trend exposes deeper systemic issues, such as inadequate education and training systems failing to align with evolving labour market needs. As a result, employers face significant challenges in recruiting qualified workers, both domestically and internationally, leading to decreased productivity and hindered economic growth. Gaps in Critical Skills

The gaps in critical skills in Kenya are largely attributable to several factors:

1. **Inadequate Education and Training Systems:** Kenya's education and vocational training systems have not kept pace with the rapidly changing needs of the labour market. This has resulted in graduates lacking a specialized skills required by industries such as IT, healthcare, and engineering. A report by the Federation of Kenya Employers (FKE) indicated that 60% of employers in key sectors find it difficult to recruit workers with the right technical skills (Federation of Kenya Employers, 2021).

2. **Mismatch Between Skills and Market Demand:** There is a significant disconnect between the skills taught in educational institutions and the requirements of the labour market. Many educational programmes fail to equip students with practical, industry-specific skills in high demand. This mismatch results in high unemployment rates among graduates while employers struggle to fill critical positions (International Labour Organization, 2022).

3. **Inadequate Labour Market Information System (LMIS):** A fully functional LMIS is essential for providing real-time data on labour trends and identifying skills shortages. However, Kenya lacks a robust LMIS that can inform both employers and policymakers about current and future labour market needs. Without accurate data, employers are unable to plan for workforce requirements, and educational institutions cannot design curricula that meet market demands (Ministry of Labour and Social Protection, 2020).

4. **Limited Engagement Between Employers and Training Institutions:** Insufficient collaboration between employers and educational institutions hinders the development of a workforce capable of meeting the country's economic demands. (Federation of Kenya Employers, 2021).

Recommendations from Employers and Stakeholders

1. **Strengthening Industry-Education Partnerships:** Employers and other stakeholders recommend stronger collaboration between industry and educational institutions to ensure that training programs are aligned with market needs. By involving employers in curriculum development and creating apprenticeship programmes, graduates will be better equipped with the skills required for the job market. Industry-driven skills development initiatives, such as those promoted by sectoral skills councils, should be expanded to more industries (Federation of Kenya Employers, 2021).

2. **Developing a Robust Labour Market Information System (LMIS):** Stakeholders in labour migration governance, including employers, emphasize the need for a comprehensive LMIS. Such a system would provide real-time data on labour market trends, skill shortages, and job opportunities. With an effective LMIS, employers can better plan for workforce needs, and educational institutions can design curricula that address critical skills gaps (International Labour Organization, 2022). This system would also enhance Kenya's ability to match migrant workers with job opportunities both locally and internationally.

3. **Enhancing Technical and Vocational Education and Training (TVET):** Employers and stakeholders recommend a greater focus on technical and vocational education and training (TVET) as a solution to address skills shortages in key sectors. Expanding and modernizing TVET programs can provide workers with practical, job-ready skills in areas like construction, healthcare, and ICT. In particular, TVET institutions should be aligned with international standards to ensure that their graduates are competitive both locally and globally (Ministry of Labour and Social Protection, 2020).

4. **Upskilling and Reskilling the Existing Workforce:** In addition to focusing on new graduates, employers recommend upskilling and reskilling programs for the current workforce. As technology and industry demands evolve, it is important to continuously train workers in emerging fields such as digital literacy and automation. Employers should collaborate with training institutions to offer lifelong learning opportunities that keep their workforce adaptable and competitive in a dynamic labour market (International Labour Organization, 2022).

5. **Policy Reforms to Align with Labour Market Needs:** Policy reforms are necessary to support the development of critical skills in Kenya. Stakeholders call for revisions to the National Labour Migration Policy (NLMP) and other labour market policies to include specific provisions for addressing skills shortages. These reforms should promote public-private partnerships and create incentives for employers to invest in skills development, especially in sectors experiencing acute skills gaps (Federation of Kenya Employers, 2021).

"Additionally, FKE emphasizes the importance of developing skills and ensuring mutual recognition of qualifications across borders. This effort aims to bridge skills gaps, improve the employability of migrant workers and enhance labour market efficiency. By doing so, migrant workers can make positive contributions to the Kenyan economy"

▶ FKE

4.4 FKE Policy and Practice in Labour Migration

4.4.1 Current Situation

The Federation of Kenya Employers (FKE) is a key player in shaping labour migration policies at national, regional, and international levels. Its role encompasses advocating for predictable, conducive, and adaptable migration policies that support business growth and economic integration. FKE's role in labour migration governance is crucial in ensuring that Kenyan employer’s benefit from a skilled, ethical, and well-integrated workforce. FKE's migration policy is built on the principles of mobility, development, and protection:

- FKE advocates for regular, safe, and humane migration to address skill gaps in high-demand sectors like energy, green jobs, and the blue economy. FKE urges for a reduction in migration barriers, such as work permits and restrictive regulations, which are often shaped by security concerns rather than economic growth.
- FKE promotes compliance with international guidelines on responsible recruitment to prevent labour exploitation. This includes collaborating with PEAs and government bodies to ensure that recruitment processes are transparent, fair, and ethical.
- FKE supports policies that prioritize decent work and the protection of migrant workers' rights, including mechanisms for safeguarding health and safety, fair wages, and social integration for migrant workers.
- FKE emphasizes the need for skills recognition across borders to bridge skills gaps and improve the employability of migrant workers. FKE advocates for training programmes that align with market needs and ensure the portability of qualifications across the regions.
- FKE represents Kenyan employers at the International Organization of Employers (IOE), the East African Employers Organization (EAEO), the Business Africa Employers Confederation (BAEC), and other global forums, ensuring that Kenyan employers have a voice in international policy discussions.

> “The Government should establish mechanisms for active and continuous engagement with employers, enabling them to proactively provide recommendations and proposals to their governments, thereby ensuring real impact”
>
> ▶ FKE

4.4.2 Gaps and Recommendations

▶Table 7.
Issues and Recommendations on Policy and Practice on Labour migration

Issue	Recommendation
Existing labour migration policies are inconsistent and fragmented across different ministries, creating bureaucratic hurdles that slow down the migration process and hinder businesses' access to migrant labour.	Collaborate with the **State Department for Labour and Skills Development** and the **National Employment Authority (NEA)** to streamline labour migration policies. Advocate for a coherent and business-friendly migration framework that reduces bureaucratic hurdles and aligns with the priorities of the **Ministry of Immigration** and other relevant regulatory bodies.
There is a lack of reliable data collection and analysis on migrant workers' demographics, skills, and employment patterns, which impedes evidence-based decision-making.	Invest in the developing robust data collection systems in collaboration with the **National Bureau of Statistics (KNBS)** to capture key information on migrant workers, such as demographics, skills, employment trends, and wage disparities. This data will inform evidence-based policymaking and help address emerging labour market needs.
Many employers lack the capacity to effectively manage diverse and multicultural workforces, leading to challenges in workplace integration and productivity.	Prioritize employer capacity through partnerships with **Employer and Business Membership Organizations (EBMOs**), such as the **Federation of Kenya Employers (FKE)**. Offer training on cultural sensitivity, workforce integration, and diversity management to enhance productivity and cohesion.
Insufficient mechanisms to support Recognition of Prior Learning (RPL), which limits the employment prospects of migrant workers and leaves gaps in sectors requiring specialized skills.	Collaborate with regional bodies, such as the **East African Community (EAC)** to implement mutual recognition of qualifications policies. Work with the **Technical and Vocational Education and Training Authority (TVETA)** to advocate for the establishment and promotion of **Recognition of Prior Learning (RPL)** programmes that align skills acquired abroad with local market needs.
Although FKE promotes responsible recruitment practices, some private recruitment agencies persist in unfair practices, such as charging high recruitment fees and failing to provide proper job descriptions.	Collaborate with the **State Department for Labour and Skills Development**, **NEA**, and **PrEAs** to enforce stricter fair recruitment standards. Ensure transparent recruitment fees, accurate job descriptions, and protection from exploitation through ongoing audits and compliance checks.
Kenya's engagement in global and regional discussions on labour migration is limited.	Increase participation in global and regional labour migration fora, such as the **ILO** and **African Union (AU)**. Build partnerships with international **NGOs** and development agencies to push for reforms that reflect Kenyan employers' interests and contribute to shaping international labour migration frameworks.
Labour migration policies are outdated (See Annex I)	Periodically review and update labour migration policies in consultation with stakeholders, including the **State Department for Labour and Skills Development**, **NEA**, and relevant **civil society organizations (CSOs)**, to reflect evolving dynamics such as changes in global labour market demands, technological advancements, and economic conditions.

"There is a need to strengthen the technical capacity of employers and their organizations in evidence-based advocacy, supporting their effective engagement in and contribution to labour migration policy-making and debate"

▶ FKE

4.5 Role of Private Recruitment Agencies

4.5.1 Current Situation

PrEAs play a significant role in Kenya's labour market, facilitating cross-border worker mobility. These agencies connect job seekers with foreign employment opportunities, streamlining recruitment for both skilled and unskilled workers. Two major associations represent private recruitment agencies in Kenya: The Association of Skilled Migrant Agencies of Kenya (ASMAK) and the Kenya Association of Private Employment Agencies (KAPEA). Registered under the National Employment Authority (NEA), both associations are responsible for sourcing, screening, and placing Kenyan workers in foreign jobs, mainly in the Middle East.

The National Employment Authority (NEA) oversees PrEA registration[16] and regulation in Kenya, ensuring compliance with national and international standards. ASMAK and KAPEA have adopted a Code of Conduct fair recruitment, supported by the International Organization for Migration (IOM). This code emphasizes transparency, protection of migrant workers' rights, and adherence to legal and ethical standards.

Additionally, PrEAs affiliated with FKE benefit from industry best practices, including FKE's advocacy for responsible recruitment and fair labour practices. They also gain access to strategic resources, training, and insights into labour market trends, enhancing their operational efficiency.

16. https://neaims.go.ke/EmploymentAgencyList.aspx

Construction workers doing road work in the streets of Suba, Kenya. © Marcel Crozet / ILO

"Over 1000 PrEAs are registered with Kenya's National Employment Authority (NEA). However, not all these agencies are active with a considerable number either dormant or under scrutiny due to non-compliance with NEA's regulations. Approximately, 40% of PrEAs in Kenya comply fully with NEA registration requirements. As a result, migrant workers, particularly those seeking employment in the Middle East, are vulnerable to exploitation and unfair practices. Several factors contribute to the dormant status of many PrEAs, including non-compliance with NEA's strict vetting and accreditation processes, leading to deregistration or inability to operate, failure to meet fair recruitment standards, such as not providing proper contracts or charging illegal fees to job seekers, and lack of updated licences. To address these issues, the NEA has introduced pre-departure training programmes and engaged in partnerships with international bodies like the International Organization for Migration (IOM) to promote fair recruitment and ensure compliance"[17]

17. Key Informant Interview

4.5.2 Gaps

Notwithstanding, the important role of PrEAs in labour migration, challenges persist, including exploitation of workers by rogue recruitment agencies. These agencies often fail to fully disclose contract terms, charge illegal fees, and neglect to ensure fair wages or safe working conditions. Migrant workers often report unfair treatment, exploitation, and lack of adequate information about their employment contracts, contributing to abuse in destination countries.

As a returnee migrant worker from Saudi Arabia narrates,

> "We faced numerous challenges, especially with language barriers and cultural shock, because we were not well-prepared before leaving. There was little to no briefing or training, and as a result, we struggled to adapt to our unfamiliar environment. Despite these challenges, we managed to survive and complete our contracts. However, when we returned to Kenya, we found extraordinarily little support available to help us rebuild our lives. The transition back home has been difficult, which is why we decided to form a self-help group. This group has been crucial in offering emotional support, sharing experiences, and finding ways to reintegrate into society. Through this network, we are helping each other navigate the struggles of life after migration."[18]

- While the NEA oversees registration and licensing, there are gaps in monitoring and enforcement of compliance. Consequently, rogue agencies continue to operate, undermining fair recruitment standards, with minimal government intervention to curb their malpractices.
- Migrant workers often face challenges in accessing social security benefits and legal protection in their host countries. Currently, no comprehensive framework exists for the portability of social security for Kenyan workers abroad, leaving them vulnerable to exploitation and inadequate protection in case of job loss, injury, or termination. To address these concerns, the Kenya Labour Market Information System (KLMIS)[19] should provide up-to-date labour market data, particularly insights into market demands, skill gaps, and industry trends. This would enable private recruitment agencies and returnee migrant workers to align their recruitment processes with the needs of the economy. For returnee migrant workers, KLMIS should offer information on job opportunities, skill matching, and training programmes to facilitate their reintegration into the domestic labour market and enhance employability.

18. Interview-Returnee
19. https://www.labourmarket.go.ke/

- While some agencies adhere to fair recruitment practices, others lack the capacity or willingness to comply with legal requirements, resulting in poor labour migration outcomes. The training and resources provided by ASMAK and KAPEA, although useful, are not always widely accessible or enforced.
- In contrast to Kenya's regulatory framework, the Musanet system in Saudi Arabia, managed by the Ministry of Human Resources, regulates the recruitment of foreign domestic workers through a centralized, transparent platform that ensures compliance and protects workers' rights. Kenya's NEA oversees the regulation of PrEAs , requiring them to be licensed to ensure fair recruitment practices.

A contradiction exists when PrEAs in Kenya are registered with the Kenyan National Chamber of Commerce and Industry (KNCCI), which primarily oversees business registration and is not equipped to regulate labour recruitment. The FKE, in collaboration with the NEA, is the appropriate body to manage PrEAs, as it focuses on employment practices and worker protection.

> "The Chamber of Commerce is not focused on labour migration, whereas FKE, aligned with NEA regulations, ensures fair recruitment and compliance with labour standards."[20]

4.5.3 Recommendations

- The government, through NEA, should enhance the monitoring and regulation of private recruitment agencies. This entails stricter vetting processes, routine audits, and real-time monitoring to ensure compliance with national and international recruitment standards. Non-compliant agencies should be deregistered promptly.
- PrEAs should provide transparent, comprehensive job descriptions and contract terms to all migrant workers. Charging recruitment fees to workers should be prohibited, and stricter penalties should be implemented for agencies violating fair recruitment standards. Collaboration with destination countries can reinforce this, ensuring Kenyan workers receive fair wages and working conditions.
- The government should establish bilateral agreements with host countries to facilitate the portability of social security benefits for Kenyan workers abroad. Deploying more labour attachés to key destination countries can provide on-ground support and protection for Kenyan migrant workers, upholding their legal rights.
- Private recruitment agencies need training and capacity-building opportunities to adhere to fair recruitment practices. FKE, in collaboration with ASMAK and KAPEA, should conduct regular workshops on labour laws, fair recruitment, and social protection measures for migrant workers.
- Strengthening data collection and analysis related to labour migration is essential. Accurate, real-time data on migrant workers, job placements, and recruitment trends can inform evidence-based policymaking and improve labour migration governance. The NEA should establish a centralized database accessible to all relevant stakeholders.

20. Key Informant Interview

- Raising awareness among job seekers about their rights and the risks of illegal recruitment is crucial. Government agencies and recruitment bodies should work together to inform potential migrant workers of their rights, fair recruitment practices, and the importance of using registered recruitment agencies.
- Effective collaboration between PrEAs, the government, FKE, COTU-K, and international bodies is vital to improving labour migration governance. Encouraging all recruitment agencies to affiliate with FKE will ensure better compliance with ethical standards and improve the overall quality of recruitment services. Fostering partnerships with NGOs and international organizations will enhance data sharing, coordination, and the protection of migrant workers' rights.

> "PrEAs should be required to register with FKE and NEA, not the KNCCI, to streamline oversight and ensure proper regulation. There is need to clarify that PrEAs must register with FKE to align with NEA's regulatory framework. This should go hand in hand with raising awareness among PrEAs about the correct registration process to avoid confusion and ensure compliance."[21]

4.6 Review role of EBMOs in Labour Migration Management

4.6.1 Current situation

Employer and Business Membership Organizations (EBMOs) in Kenya play a crucial role in labour migration management, contributing to national and regional economic development. These organizations provide vital support to migrant workers, employers, and the broader labour market, aligning their activities with national labour migration policies and frameworks. This review aims to identify key EBMOs, highlights their roles as documented in literature, explore the challenges they face, and offer recommendations for addressing those challenges to better support migrant workers.

Some of the key EBMOs involved in labour migration management in Kenya are:

- Federation of Kenya Employers (FKE): As the leading employer organization, FKE represents Kenya's private sector employers, including those who employ migrant workers. See https://www.fke-kenya.org/
- Kenya Private Sector Alliance (KEPSA): A national umbrella organization that brings together sectoral business associations, advocating for policies and regulations that promote fair labour practices. See https://kepsa.or.ke/

21. Key Informant Interview

- Kenya National Chamber of Commerce and Industry (KNCCI): Focuses on promoting trade and industry, and facilitating international labour mobility. See https://www.kenyachamber.or.ke/
- Kenya Association of Manufacturers (KAM): Although primarily focused on promoting industrial growth, KAM also participates in policy discussions on labour migration, particularly in sectors with a significant number of migrant workers. See https://kam.co.ke/

4.6.2 Roles of EBMOs

1. **Policy Advocacy and Development**
   - EBMOs such as FKE, actively engage in the formulation of labour migration policies. FKE collaborates with the Kenyan government to shape policies that reflect the interests of employers while ensuring migrant workers' rights are respected. EBMOs contribute to national policy dialogues and are instrumental in the drafting and revision of labour migration frameworks such as the National Labour Migration Policy.
   - FKE is a key stakeholder in Kenya's National Labour Migration Framework, providing critical insights into employer needs, market trends, and regulatory gaps.
2. **Promoting Ethical Recruitment Practices**
   - EBMOs advocate for fair recruitment practices to protect both employers and migrant workers. from exploitation. FKE has collaborated with international bodies like the ILO to develop and promote fair recruitment guidelines and practices.
   - KEPSA and FKE work towards the implementation of guidelines that aim to curb fraudulent recruitment agencies that exploit migrant workers.
3. **Capacity Building and Training**
   - EBMOs facilitate training for both employers and migrant workers. FKE provides resources to ensure employers are aware of their responsibilities in managing migrant labour effectively and ethically. It also supports training programmes for migrants on labour rights, employment contracts, and cultural adaptation.
   - EBMOs also help prepare employers to comply with international labour standards, ensuring that both the rights of the employer and the migrant worker are safeguarded.
4. **Dispute Resolution and Labour Rights Protection**
   - EBMOs, such as FKE, serve as mediators in labour disputes involving migrant workers. They provide legal advisory services to employers on how to manage migrant labour disputes while ensuring compliance with national labour laws and international labour standards.
5. **Data Collection and Research**
   - EBMOs contribute to labour migration management by conducting research and gathering data on labour migration trends. This data is essential for policy formulation and ensuring that labour migration policies are evidence-based. FKE has participated in research collaborations with the ILO to understand labour market demands, skills gaps, and the conditions of migrant workers.

4.6.3 Gaps

1. One of the main challenges EBMOs face is the lack of a cohesive and consistent national labour migration policy in Kenya. Though efforts are ongoing, the regulatory environment is fragmented, making it difficult for EBMOs to advocate for comprehensive reforms that would benefit both employers and migrant workers.
2. Despite efforts to promote fair recruitment practices, enforcement remains weak, and many recruitment agencies operate informally or exploit legal loopholes, leading to the mistreatment of migrant workers. EBMOs struggle to ensure all employers adhere to established ethical standards.
3. EBMOs often face resource constraints, limiting their capacity to implement extensive programmes for training, advocacy, and support for migrant workers. This affects their ability to scale operations and reach a wider audience, particularly in rural or underserved areas.
4. Migrant workers often lack sufficient support mechanisms when facing exploitation or mistreatment. Although EBMOs play a key role in advocacy, their ability to provide direct assistance to affected workers remains limited due to structural and resource barriers.
5. Navigating international and regional labour migration frameworks is complex for EBMOs, especially with varying requirements and standards across different countries. This complexity creates barriers to streamlining labour mobility and ensuring migrant worker protection at a regional level.

4.6.4 Recommendations

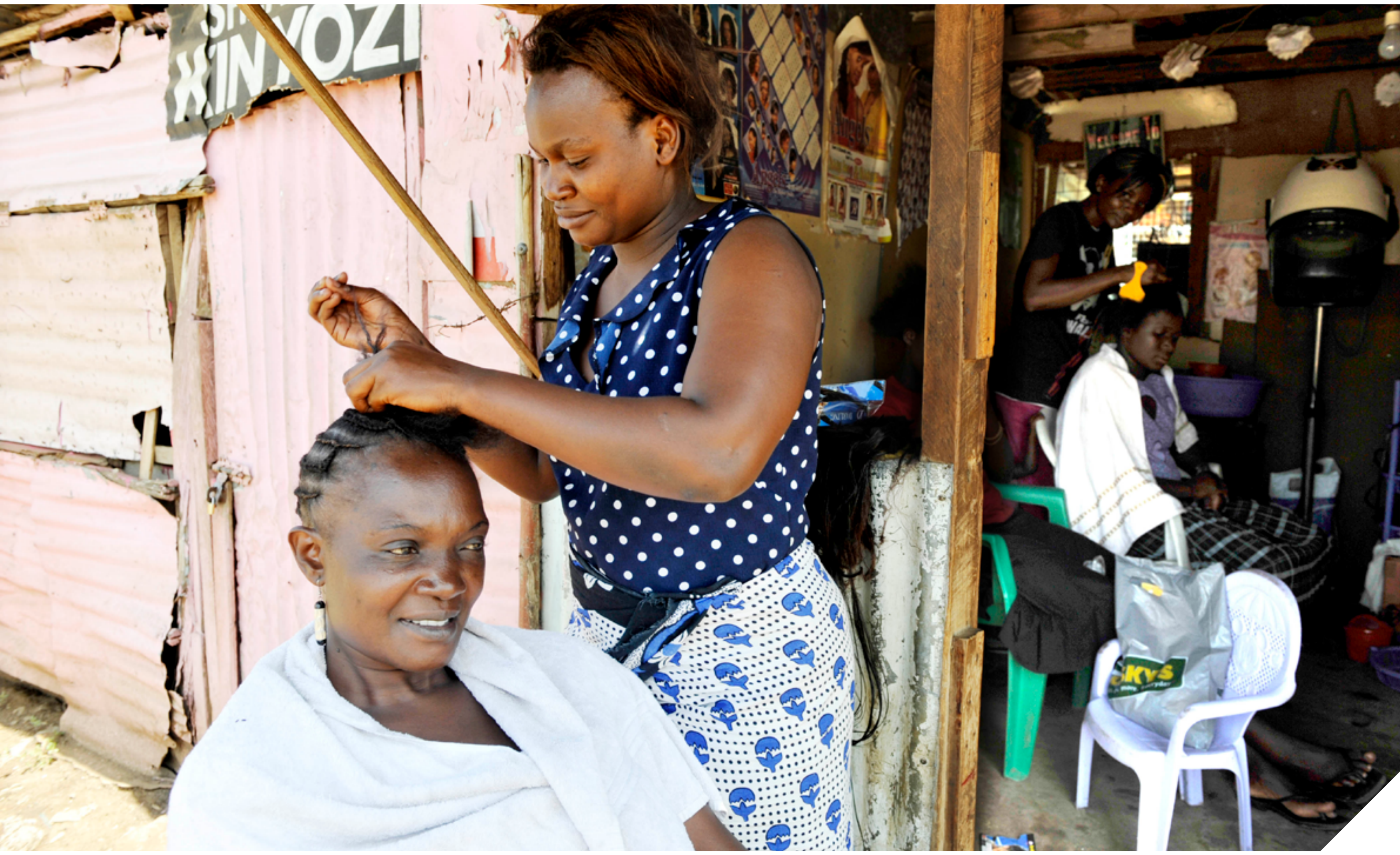
1. Enhance advocacy efforts: EBMOs should increase their advocacy efforts to influence national policies on labour migration. By working closely with the Government of Kenya and international bodies like the ILO, EBMOs can ensure policies reflect the needs of both businesses and migrant workers, promoting responsible recruitment and decent work.
2. Build capacity on fair recruitment: EBMOs should focus on building the capacity of their members on fair recruitment practices and legal frameworks related to migrant workers. This can improve compliance with labour standards and reduce exploitation.
3. Establish a code of conduct: Support the establishment of a code of conduct for recruitment agencies under the oversight of EBMOs, ensuring fair recruitment practices that prevent abuse and exploitation of migrant workers.
4. Foster public-private dialogue: Encourage sustained public-private dialogue between EBMOs, the government, and other stakeholders to address labour migration challenges, such as unregulated migration and lack of social protection for migrant workers.
5. Enhance social protection: EBMOs should push for enhanced social protection measures for migrant workers, including health insurance, pension schemes, and access to legal support.
6. Recognize skills and qualifications: Support the establishment of systems that recognize the skills and qualifications of migrant workers to match them with appropriate jobs.
7. Invest in data collection and research: EBMOs should invest in data collection and research to provide insights into labour migration trends, challenges, and opportunities. This data is crucial for designing effective policies and interventions.
8. Address gender-specific issues: EBMOs should ensure that gender-specific issues in labour migration are addressed, such as the vulnerabilities faced by women in domestic work and informal sectors.

9. Lead awareness campaigns: EBMOs should lead campaigns that inform potential migrant workers about their rights, the legal processes of migration, and the risks associated with irregular migration.

10. Establish bilateral agreements: EBMOs should help create bilateral or multilateral agreements with destination countries that protect the rights of Kenyan migrant workers.

4.7 Good Practices

Effective management of labour migration is essential for maximizing its benefits to both host countries and migrant workers. Existing literature reveals a wealth of good practices from various countries, highlighting innovative approaches to labour migration governance, employer engagement, and protection of migrant workers' rights. These practices underscore the importance of collaboration among government agencies, employers, and civil society organizations to create fair recruitment processes, provide support services, and enhance workforce integration. By examining successful strategies from around the world, particularly in regions with well-established labour migration systems, stakeholders in Kenya can draw valuable insights to inform policy development and implement robust frameworks. These frameworks should promote fair and dignified working conditions for migrant workers while addressing local labour market needs.



Woman hairdresser braiding a customer (Kisumu, Kenya). © Marcel Crozet / ILO

▶Table 8.
Summary of Good Practices

Country	Good Practice	Agency/Chamber of Commerce/ Federation of Employers	Recommendation for FKE
Cambodia	Comprehensive licensing and regulation of Private Employment Agencies (PrEAs)	Ministry of Labour and Vocational Training	FKE should advocate for stronger regulations that require licensing for all recruitment agencies, ensuring strict enforcement to prevent illegal or unfair recruitment practices.
Cambodia	Code of Conduct for Recruitment Agencies	Association of Cambodian Recruitment Agencies (ACRA), Manpower Association of Cambodia (MAC)	FKE can develop a code of conduct to guide recruitment agencies in Kenya, promoting fair recruitment practices and protection of migrant workers.
Thailand	Worker Protection through Financial Guarantees	Department of Employment (DOE)	FKE should advocate for policies requiring recruitment agencies to provide financial guarantees to compensate workers in cases of rights violations, thereby ensuring financial protection for migrant workers.
Indonesia	Strict Prohibition of Recruitment Fees for Migrant Workers	Ministry of Manpower	FKE should advocate for a zero-recruitment fee policy to protect Kenyan migrant workers from exploitative practices. This policy would ensure that recruitment costs are borne by employers, rather than the workers.
Philippines	Strict Prohibition of Recruitment Fees for Migrant Workers	Department of Labour and Employment (DOLE)	FKE should adopt a policy requiring employers to bear recruitment fees, safeguarding migrant workers from exploitation.
Philippines	Collaboration between Public Employment Services (PES) and Private Recruitment Agencies (PrEAs)	Public Employment Service Office (PESO)	FKE can recommend partnerships between PES and private agencies in Kenya to improve job vacancy transparency and ensure more comprehensive support for job seekers, especially in remote or disadvantaged areas.
Vietnam	Ranking System for Recruitment Agencies	Vietnam Association of Manpower and Supply (VAMAS)	A ranking system for recruitment agencies in Kenya could be implemented, assessing agencies based on compliance with fair recruitment standards and encouraging better practices and accountability.
Cambodia	Remedies for Migrant Workers	Ministry of Labour and Vocational Training	Policies ensuring workers' access to financial compensation and legal support in cases of exploitation should be advocated for, with collaboration from NGOs providing legal assistance.
USA	Strong partnerships between government agencies, employers, and civil society	U.S. Chamber of Commerce	Partnerships between government, employers, and civil society in Kenya should be fostered to improve dialogue and joint initiatives for effective labour migration management.
UK	Sector-specific programmes like the "Health and Care Visa" ensure compliance and provide training	Confederation of British Industry (CBI)	Sector-specific initiatives supporting compliance with labour migration policies and offering training to employers on cultural sensitivity, integration, and legal requirements should be developed.

Country	Good Practice	Agency/Chamber of Commerce/ Federation of Employers	Recommendation for FKE
China	Labour Market Information Systems (LMIS) provides real-time data on labour market trends	Ministry of Human Resources and Social Security	Establish a Labour Market Information System (LMIS): Set up an LMIS in Kenya to enhance workforce planning and provide employers with real-time information on labour market needs and trends.
Netherlands	Recognition of employers who prioritize fair treatment and compliance through awards and public recognition	Dutch Employers' Federation (VNO-NCW)	Develop a recognition programme in Kenya to reward employers who demonstrate ethical practices and comply with labour migration regulations, promoting fair treatment of workers.
Germany	Knowledge sharing and skills recognition programs for migrant workers	German Chambers of Commerce (DIHK)	Establish knowledge-sharing platforms, similar to the German Chambers of Commerce, to promote responsible employer engagement and support skills recognition for migrant workers.
India	Employers invest in skill development for migrant workers, enhancing workforce productivity	Federation of Indian Chambers of Commerce and Industry (FICCI)	Encourage Kenyan employers to invest in skills development initiatives for migrant workers, enhancing productivity and empower the workforce.
Philippines	Pre-departure orientation programs for migrant workers covering legal rights and job expectations	Philippine Overseas Employment Administration (POEA)	Implement pre-departure orientation programmes for Kenyan migrants, educating them on their rights, job expectations, and providing a feedback mechanism for effective communication throughout their employment.
Nepal	Well-established Migrant Resource Centres provide information and support to outbound workers	Centre for the Study of Labour and Mobility (CESLAM)	Create Migrant Resource Centres in Kenya to assist employers and migrants in navigating labour migration processes, providing information, legal advice, and support.
Singapore	Clear guidelines for employers on labour migration, including compliance with regulations	Singapore Business Federation (SBF)	Develop clear guidelines and resources for Kenyan employers on labour migration regulations and best practices, ensuring adherence to ethical standards and legal compliance.
Australia	Strong health and safety standards prioritized by employers for both local and migrant workers	Australian Chamber of Commerce and Industry (ACCI)	Promote the establishment and enforcement of strong health and safety standards for all workers, ensuring a safe and compliant work environment for both local and migrant employees.

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ANNEX I

Table 9.
Addressing the shift Labour migration

Area	Current Issue	Update Needed
1. Changes in Global Labour Market Demands	**Sectoral Shifts**: Policies focus on low-skilled labour (e.g., construction, domestic work) while high-skilled sectors (e.g., tech, healthcare) are growing globally.	Update bilateral labour agreements to promote high-skilled migration (IT, healthcare, engineering). Foster partnerships with countries facing labour shortages in these areas.
	Remote Work Opportunities: Remote work opportunities, especially post-COVID, are not sufficiently addressed.	Include provisions that promote remote work opportunities for Kenyans to work for foreign companies without migrating, reducing brain drain.
2. Technological Advancements	**Digital Platforms for Recruitment:** Kenya relies on traditional recruitment practices, neglecting technological advancements.	Mandate the use of digital platforms for recruitment, ensuring transparency and reducing fraud. NEA should develop a centralized platform to track recruitment.
	Skill Recognition and Training: The RPL framework is not aligned with emerging technological trends like AI and cloud computing.	Update the RPL framework to include certifications for skills in AI, cloud computing, and digital marketing. Partner with tech firms to upskill Kenyan workers.
3. Evolving Economic Conditions	**Remittance Management:** Policies do not reflect changes in remittance patterns and current economic realities.	Incentivize the investment of remittances into sectors like real estate, agriculture, and entrepreneurship. Collaborate with financial institutions for investment products.
	Social Protection Mechanisms: Migrant workers lack sufficient social protection abroad, and reintegration is poorly managed.	Review and update social protection mechanisms (NSSF, NHIF) to ensure migrant workers can contribute and benefit while abroad, with smooth reintegration upon return.
4. Bilateral Labour Agreements	**Geopolitical Changes:** Existing bilateral agreements may not reflect current geopolitical and labour market conditions.	Review and update bilateral labour agreements to include stronger worker protections, fair recruitment, and dispute resolution. Pursue new agreements with emerging markets.
5. Migration for Skilled vs. Low-Skilled Labour	**Emphasis on Low-Skilled Labour:** Current policies focus heavily on low-skilled labour migration (e.g., domestic work).	Shift focuses on skilled migration in sectors like IT, healthcare, and engineering. It collaborates with international institutions to meet global standards for skilled professionals.
6. Environmental and Climate-Induced Migration	**Impact of Climate Change:** Kenya's labour migration policies do not address migration due to climate-induced changes.	Integrate climate-induced labour migration provisions in the policy, offering economic alternatives and access to job opportunities abroad for affected populations.

ANNEX II

List of Participants

Agency/Organisation	Participants
Federation of Kenya Employers (FKE)	6
National Employment Authority (NEA)	2
Association of Skilled Migrant Agencies of Kenya (ASMAK)	5
Kenya Association of Private Employment Agencies (KAPEA)	9
National Industrial Training Authority	1
State Department for Labour and Skills Development	3
International Labour Organization (ILO)	2
International Organization for Migration (IOM)	1
Returnee Migrant Workers/Survivors	12
Transport & Allied Workers Union	1
Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals & Allied Workers	2
COTU	3
Private Employers	15

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