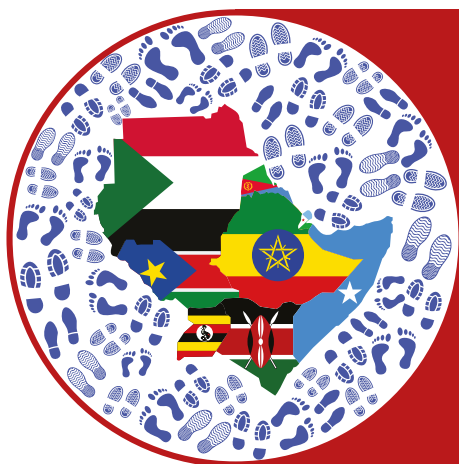




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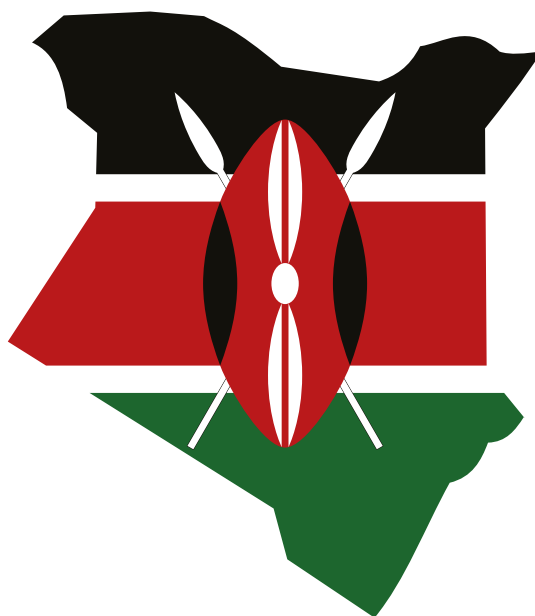


International  
Labour  
Organization



An assessment of  
labour migration and  
mobility governance  
in the IGAD region  
Country report for

**Kenya**



**FMPT**

Free Movement of Persons and Transhumance  
in the IGAD Region: Improving Opportunities  
for Regular Labour Mobility



# **An assessment of labour migration and mobility governance in the IGAD region: Country report for Kenya**

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**Free Movement of Persons and Transhumance in the IGAD Region: Improving Opportunities for Regular Labour Mobility**

Funded by the European Union

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First published 2020

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An assessment of labour migration and mobility governance in the IGAD region: Country report for Kenya

Free Movement of Persons and Transhumance in the IGAD Region: Improving Opportunities for Regular Labour Mobility

ISBN: 978-92-2-134006-5 (print)  
978-92-2-031677-1 (PDF)

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Printed in Addis Ababa – Ethiopia

Design and layout by the International Training Centre of the ILO, Turin – Italy

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## List of acronyms and abbreviations

<b>AIR</b>	African Institute for Remittances
<b>AU</b>	African Union
<b>AVRR</b>	Assisted Voluntary Return and Reintegration
<b>BLA</b>	bilateral labour agreement
<b>CEACR</b>	Committee of Experts on the Application of Conventions
<b>CMP</b>	Protocol for the Establishment of the EAC Common Market
<b>COMESA</b>	Common Market for East and Southern Africa
<b>COTU-K</b>	Central Organization of Trade Unions (Kenya)
<b>CRRF</b>	Comprehensive Refugee Response Framework
<b>CUE</b>	Commission for University Education
<b>DIS</b>	Department of Immigration Services
<b>EAC</b>	East African Community
<b>EAEO</b>	East African Employers Organisation
<b>EATUC</b>	East African Trade Union Confederation
<b>EUTF</b>	European Union Emergency Trust Fund for Africa
<b>FKE</b>	Federation of Kenya Employers
<b>GDP</b>	gross domestic product
<b>GIZ</b>	Deutsche Gesellschaft für Internationale Zusammenarbeit (German Development Agency)
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>IO</b>	international organization
<b>IPRS</b>	Integrated Population Registration System
<b>IUCEA</b>	Inter-University Council for East Africa
<b>KenInvest</b>	Kenya Investment Authority
<b>KES</b>	Kenyan shilling

<b>KLMIS</b>	Kenya Labour Market Information System
<b>KNBS</b>	Kenya National Bureau of Statistics
<b>KNCHR</b>	Kenya National Commission on Human Rights
<b>KNQA</b>	Kenya National Qualifications Authority
<b>KUDHEIHA</b>	Kenya Union of Domestic, Hotel, Educational Institutions, Hospitals and Allied Workers
<b>MIEUX</b>	Migration EU Expertise
<b>MOFA</b>	Ministry of Foreign Affairs
<b>MOICNG</b>	Ministry of Interior and Coordination of National Government
<b>MOLSP</b>	Ministry of Labour and Social Protection
<b>MRA</b>	mutual recognition agreement
<b>NCM</b>	National Coordination Mechanism on Migration
<b>NCPD</b>	National Council for Population and Development
<b>NEA</b>	National Employment Authority
<b>NGO</b>	non-governmental organization
<b>NITA</b>	National Industrial Training Authority
<b>OSH</b>	occupational safety and health
<b>PEA</b>	private employment agency
<b>RMMS</b>	Regional Mixed Migration Secretariat
<b>TVET</b>	technical vocational education and training
<b>TVETA</b>	Technical and Vocational Education and Training Authority
<b>TWG</b>	technical working group
<b>UNECA</b>	United Nations Economic Commission for Africa
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNTOC</b>	United Nations Convention Against Transnational Organized Crimes
<b>UNTOC TIP Protocol</b>	United Nations Protocol Against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children
<b>YEDF</b>	Youth Enterprise Development Fund

# Acknowledgements

This report was produced by Emmerentia Erasmus in close collaboration with the International Labour Organization (ILO) and the Intergovernmental Authority on Development (IGAD) Secretariat, and in the framework of the European Union-funded project on “Free Movement of Persons and Transhumance in the IGAD Region: Improving Opportunities for Regular Labour Mobility” (2017–2020).

The drafting of this report was made possible through the generous sharing of knowledge and information by the Government of Kenya, the IGAD Secretariat, the ILO, the Central Organization of Trade Unions (Kenya), the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), the European Union Delegation to Kenya, the Federation of Kenya Employers, the International Organization for Migration, the Regional Mixed Migration Secretariat/Mixed Migration Centre, Samuel Hall, and the United Nations Office on Drugs and Crime.

The author would like to express special thanks to the Ministry of Labour and Social Protection; the National Employment Authority; the National Coordination Mechanism on Migration Secretariat, in particular Dr. Dan Opon, Assistant Director of Immigration Service; the Ministry of Interior and Coordination of National Government; the National Council for Population and Development; the Ministry of Education; the Ministry of Foreign Affairs; the National Qualifications Authority; and the Youth Enterprise Development Fund.

Special thanks also go to Aurelia Segatti, Heike Lautenschlager, Nicholas Grisewood, Richard Lavallée, and Ephrem Getnet for their technical guidance, comments on drafts, and oversight as well as Mintwab Yemane for her valuable contributions in cross checking the field data and ensuring editing, proof reading and designing of the final version of the report. Likewise, the author also recognizes Wycliffe Ouma, the National Project coordinator in Kenya, for his valuable contributions in cross checking the field data and ensuring editing and proof reading of the final version, the support of Amare Negash from the ILO for coordinating logistics of the study, and Abdiaziz Yakub for his support during the study mission in the country. John Maloy did the editing of the report.

**This publication is financed by the European Union Emergency Trust Fund of the European Union.**



# Foreword

The International Labour Organization (ILO) in close collaboration with the IGAD Secretariat has produced this report titled *Labour migration and mobility governance in the IGAD region: Country report for Kenya* as part of the project on “Free Movement of Persons and Transhumance in the IGAD Region: Improving Opportunities for Regular Labour Mobility” financed by the European Union. The report forms part of the knowledge-generation component of the project, and aims to generate an evidence base for improving labour migration and mobility governance in the Intergovernmental Authority on Development (IGAD) region, which is characterized by forced displacement, mixed migration flows, and limited options for regular labour migration and mobility.

However, increasing opportunities for labour mobility through an IGAD Free Movement of Persons Protocol is believed to promote regional integration and reduce pressure on national labour markets that are unable to provide sufficient decent work opportunities. In addition, countries of destination within IGAD could benefit from labour and skills that they require for socio-economic development. Furthermore, increased opportunities for legal migration are expected to lead to more migrants migrating safely and enjoying decent work opportunities. The monitoring and enforcement of migrants’ rights are also expected to be improved through the normative framework that such a Protocol will put in place.

In this context, the country report for Kenya highlights major trends and examines various policy and legal frameworks governing labour migration and mobility in the country using a comprehensive Analytical Framework developed for this study. The findings and recommendations of the study are structured around three major pillars and 12 thematic areas that are building blocks of labour migration and mobility governance. The first pillar, Strengthening Labour Migration Governance, examines national systems and capacities to collect and analyse labour migration data; capacity to develop and implement labour migration policies; the regulating of recruitment agencies; and improving coordination on migration issues at various levels. The second pillar, Advancing Opportunities for Regulated Labour Migration and Decent Work, assesses migrants’ access to labour markets, information, education, and finance, and facilitating the social inclusion and integration of migrants. The third pillar, Enhancing the Protection of Migrant Workers and their Families, reviews migrants’ rights, social security, labour inspection, and reception and return.

I believe the findings of the study will provide a comprehensive overview of migration and mobility governance in Kenya and significantly contribute to the development of the IGAD Free Movement of Persons Protocol, as well as its implementation once it is adopted.

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for AU and UNECA



## Executive summary

The International Labour Organization (ILO) is implementing the European Union Emergency Trust Fund-funded project “Free Movement of Persons and Transhumance in the IGAD Region: Improving Opportunities for Regular Labour Mobility” in collaboration with the Intergovernmental Authority on Development (IGAD).

The project aims to improve opportunities through the development of models of intervention in the broader context of regional integration. In the long-term it is expected to extend decent work opportunities to current and potential migrants in the region, and further contribute to regional integration.

In this context, the ILO is conducting a series of studies to better understand the migration and labour market dynamics in the region, including the constraints and opportunities for employment creation and the causes of skills shortages. Labour migration and mobility governance assessments have been undertaken of the IGAD Member States, which are captured in country reports and a global report. These assessments should support the development and implementation of the IGAD Free Movement of Persons Protocol.

For these assessments an Analytical Framework was developed, which assesses policies, laws and practices on labour migration and mobility. The Analytical Framework is structured around three pillars that are building blocks for enhancing labour migration in the IGAD region:

- ▶ **Pillar I.** Strengthening labour migration governance;
- ▶ **Pillar II.** Advancing opportunities for regulated labour migration and decent work; and
- ▶ **Pillar III.** Enhancing the protection of migrant workers and their families.

Each pillar contains a set of thematic areas with guidelines that contribute towards achieving the respective pillar. The guidelines are derived from the:

- ▶ *ILO Multilateral Framework on Labour Migration: non-binding principles and guidelines for a rights-based approach to labour migration* (ILO, 2006);
- ▶ IGAD Regional Migration Policy Framework; and
- ▶ draft IGAD Free Movement of Persons Protocol.

The last part of the report contains pivotal recommendations for advancing the governance of labour migration in Kenya and the IGAD region, which are derived from the Analytical Framework assessment. Data for this assessment was gathered through desktop research and semi-structured interviews with government officials, civil society organizations, employers’ and workers’ organizations, international organizations (IOs), and EU Delegations during a field mission to Nairobi from 16–20 April 2018.

## Overview of Kenya's migration trends and migration management

Kenya is mainly a destination and transit country for people in mixed migration flows from East Africa, including refugees, irregular, and economic migrants (RMMS, 2017). Migrants transit Kenya to reach South Africa, the Middle East and North Africa, West Africa, Europe, and North America. Most immigrants in Kenya are from African countries, and the majority from East African countries (IOM, 2015, p. 16). Labour migrants from Asia, such as Bangladesh, India, and Pakistan are also found in Kenya (MGSOG, 2017, p. 6). In contrast to a number of its neighbours, Kenya is to a lesser extent a country of origin for migrants in mixed migration flows. Kenyan emigrants stand out for being skilled and educated, and leave for employment abroad through regular means. The countries and regions they travel to for education and work include Uganda, the United Republic of Tanzania, Botswana, Lesotho, South Africa, the United States of America, Europe, the Arabian Peninsula, and the Middle East (RMMS, 2017). Low-skilled migrant workers mostly migrate to the Middle East and the Gulf countries for work, which is facilitated through private employment agencies (PEAs). Higher wages, unemployment in Kenya and in neighbouring countries, and difficulty in gaining access to developed countries drive these migration flows. Abuse and trafficking have been reported in these migration flows, which the Government of Kenya (Government of Kenya) has tried to address through regulating PEAs and concluding bilateral labour agreements (BLAs) with destination countries.

Various ministries play a role in migration and mobility governance in Kenya, including the:

- ▶ Ministry of Interior and Coordination of National Government;
- ▶ Ministry of Labour and Social Protection,
- ▶ Ministry of Foreign Affairs; and
- ▶ Ministry of East African Community and Regional Development.

Social partners engage in tripartite consultation with the Government of Kenya, namely the Central Organization of Trade Unions (Kenya) (COTU-K) and the Federation of Kenyan Employers (FKE). Ministries, international organizations, non-governmental organizations (NGOs), and academia participate in the National Coordination Mechanism on Migration (NCM), which is a government-led inter-agency platform on migration issues.

The next section below presents an assessment of Kenya's labour migration and mobility governance in terms of the thematic areas of the Analytical Framework, while offering recommendations that are more fully developed in the final chapter of this report.

## Analytical Framework analysis

### Pillar I. Strengthening labour migration governance

#### Thematic Area 1. Capacity to collect and analyse labour migration data

Kenya's Labour Market Information System (KLMIS) is available online and provides updated labour market analysis. It should be further enhanced to capture sectorial, occupational, and regional labour shortages. The Government should use the KLMIS as an evidence base for developing strategies to address skills shortages, such as targeted skills development and attracting migrant workers to certain sectors. Moreover, while labour flows and skill shortages are at times discussed in IGAD meetings, Kenya and the other IGAD Member States should put in place routine sharing of data and analysis on labour supply and demand, with a view to identifying opportunities to enhance labour migration and fill skills gaps.

The Government of Kenya gathers substantial amounts of migration data, but needs to bolster systematic data analyses and sharing of data among government agencies, with a view to applying it to labour migration policy development and implementation. The draft National Migration Policy should capture these data management objectives and detail concrete steps to achieve them. In addition, analysis and sharing is being developed, which should address these shortcomings.

#### Thematic Area 2. Coordination on labour migration

The NCM enjoys strong government ownership, but should include social partners. NCM discussions on labour migration mostly focus on low-skilled labour migration to the Middle East and Gulf countries due to the acute protection concerns in these flows. NCM consultations should be broadened to more comprehensively address labour migration to and from other regions. Tripartite consultation functions well at the national level. Social partners engage in labour migration discussions at the East African Community (EAC) level, through their participation in the East African Employers Organisation (EAEO) and the East African Trade Union Confederation (EATUC). The Horn of Africa Confederation of Trade Unions was recently formed and should establish a partnership with IGAD. A regional employers' organization should also be formed. Such collaboration could assist in pinpointing impediments to the free movement of persons in the IGAD region and devising workable solutions, as well as enhancing protection for people on the move. Moreover, the sharing of labour market information and profiles of good practices on labour migration should be instituted in existing regional and continental forums, such as the IGAD Regional Consultative Process and African Union meetings.

### Thematic Area 3. Capacity to formulate and implement policy

Kenya is finalizing its draft National Migration Policy, which is not publicly available, and it will include labour migration policy objectives. The National Migration Policy should detail policy coherence with other policy areas, such as employment, education, and economic development and integration, as well as Kenya Vision 2030, the country's development plan for 2008–2030. The NCM could serve as an important mechanism to ensure policy coherence through continual coordination. Initiatives aimed at protecting the rights of migrant workers include: BLAs with Qatar, Saudi Arabia, and the United Arab Emirates; posting labour attachés to these countries; and regulating PEAs. The National Migration Policy should address the protection challenges of migrant workers in Kenya and Kenyan labour migrants in all key migration corridors. Kenya has ratified the ILO Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), but it needs to sign and ratify the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

### Thematic Area 4. Regulating recruitment agency practices

Kenya is promoting the establishment of written, understandable, and enforceable employment contracts that serve as the basis for determining obligations and responsibilities. PEAs need to register and operate according to a standardized licensing system specified in the law and overseen by the National Employment Authority (NEA). The COTU-K and FKE participate in tripartite consultations, during which the operations of PEAs and how to improve them are discussed. The 2016 Code of Conduct for Private Recruitment Agencies aims to establish a PEA self-regulatory regime in order to aid the protection of migrant workers' rights. The NEA should ensure that pre-departure training is given to all migrant workers destined for the Middle East. Pre-departure training appears not to be strictly enforced. Costs related to deployment can be charged to a migrant worker, such as administrative costs and trade tests. To ensure the protection of migrant workers, they should not face any charges for recruitment, placement, and deployment. Kenya should sign and ratify the ILO Private Employment Agencies Convention, 1997 (No. 181).

## **Pillar II. Advancing opportunities for regulated labour migration and decent work**

### Thematic Area 1. Labour mobility schemes to support labour market needs

Kenya makes information on the requirements for the admission, employment, and residence of migrant workers available online, which facilitates labour migration and mobility. Entry visas can be obtained online and all services for foreign nationals are being moved online. Obtaining a work permit can be a lengthy process. Labour mobility and labour migration is facilitated through the EAC Common Market Protocol for EAC citizens, who have been waived work permit fees in Kenya. The Government encourages establishment and investment in Kenya through various incentives for foreign investors, including by offering a number of work permits for foreign staff. Kenya allows dual citizenship, which is supportive of circular and return migration, and mentorship programmes aim to engage the diaspora in Kenya. Brain drain remains a challenge. The Government has tried to address it by giving workers

with critical skills the opportunity to be placed in public institutions on completion of their studies and by aiming to align the salaries of public workers to international standards. Kenya should fill skills gaps by putting in place measures to attract migrant workers, including the diaspora.

## **Thematic Area 2. Supporting functions for participation in the labour market, including access to information, education, training, skills recognition, and finance**

Some potential migrants receive information on opportunities for regular labour migration and the dangers of irregular labour migration from the COTU-K, trade union organizations, and NGOs. Migrant workers in Kenya should be systematically informed of their rights and opportunities to facilitate their social and economic integration in Kenya.

Migrant workers have access to vocational training and educational opportunities in Kenya, as well as to the four bodies that recognize skills and qualifications. The Kenya National Qualifications Authority (KNQA) is being rolled out to streamline this recognition system. The KNQA has limited capacities, however, and the system it is launching appears to be slow and ineffective. Mutual recognition agreements and the Regional Qualifications Framework for Higher Education, which have been developed at the EAC level, are also not delivering the desired results. An assessment should be undertaken of what is working and not working in the harmonization and mutual recognition of qualifications in the EAC region, so that lessons can be learnt for the IGAD region, and used to develop a sound foundation for the region.

Kenya has been working to reduce the cost of remittances by facilitating access to financial services. The Government should implement financial incentives, such as tax rebates, to encourage the use of remittances for investment.

## **Thematic Area 3. Promoting social integration and inclusion**

The Government of Kenya implements activities to integrate refugees, such as on enhancing their education. There are no activities to specifically facilitate the integration of migrant workers and no awareness-raising campaigns regarding the contribution that migrant workers are making to Kenya. The Government should identify the contributions that migrant workers make to Kenya, as well as the integration challenges they face, and develop public awareness-raising activities on their contribution to support their integration.

A Dependant's Pass needs to be obtained for a spouse or child to join a migrant worker in Kenya. This Pass does not grant access to employment – spouses and children require their own work permits to access employment. The education system can only be accessed by migrant workers' children once they have obtained a Student Pass, which is free of charge for EAC citizens.

## **Pillar III. Enhancing the protection of migrant workers and their families**

### **Thematic Area 1. Protection of migrant workers' human rights**

- ▶ In principle, national laws on human rights apply to migrant workers, and the Kenya National Commission on Human Rights (KNCHR) is responsible for monitoring, investigating, and enforcing human rights. Regular labour migrants in Kenya have access to the Employment and Labour Relations Court to settle employment disputes. The extent to which the rights of migrant workers are enforced is unclear. The Government should proactively inform migrant workers in Kenya of their rights, and ensure that migrant workers in an irregular situation have access to protection mechanisms. Kenyan migrant workers in distress can contact their embassies and labour attachés for assistance, and Kenyan domestic migrant workers abroad can also contact the COTU-K. The Government has worked to address national and international human trafficking, including through the implementation of the Counter-Trafficking in Persons Act, 2010, which is in line with the United Nations Convention Against Transnational Organized Crimes. Implementation of the Act needs to be strengthened, however, and the National Referral Mechanism to assist trafficked person in Kenya needs to be bolstered.

### **Thematic Area 2. Social security and social protection**

While regular labour migrants in Kenya should enjoy the same protection as nationals under Kenya's national labour law, the extent to which this protection is enforced is unclear.

Regular migrant workers have access to Kenya's National Social Security Fund, including self-employed migrants. Kenya has no bilateral, regional, or multilateral agreements in place to facilitate the transferability and portability of social security benefits and should develop such agreements, including through finalizing the draft Social Security Portability Bill of the EAC Common Market Protocol.

### **Thematic Area 3. Labour inspection for migrant workplaces**

National labour law requires the workplaces of migrant workers to be inspected. The extent to which migrants' workplaces are de facto investigated, and whether the responsible authorities have the necessary resources, including adequately trained labour inspection staff, requires further investigation.

### **Thematic Area 4. Facilitating reception and return**

The Government should provide migrant workers in Kenya with on-arrival information or training on their rights and obligations, including such topics as access to social services, dispute settlement mechanisms, and tax contributions. At present migrant workers in Kenya may receive training and information from their employer. Return and reintegration support and activities for Kenyan returnee migrants are implemented by different actors. A clear policy framework for return and reintegration that facilitates coordination between different services providers and identifies gaps that need to be addressed should be developed or anchored in the draft Migration Policy.





# 1. Introduction

“

*The overall objective of the programme is to support the Free Movement of Persons in the IGAD Region with a view to spurring economic integration and development.*

The International Labour Organization (ILO) is implementing the project “Free Movement of Persons and Transhumance in the IGAD Region: Improving Opportunities for Regular Labour Mobility” in collaboration with the Intergovernmental Authority on Development (IGAD). The project is a key component of the European Union Emergency Trust Fund for Africa (EUTF) financed programme “Towards Free Movement of Persons and Transhumance in the IGAD Region”. The overall objective of the programme is to support the free movement of persons in the IGAD region, with a view to spurring regional economic integration and development.

The specific objective of the Free Movement of Persons and Transhumance in the IGAD Region: Improving Opportunities for Regular Labour Mobility project is to improve opportunities for regulated labour mobility and decent work within the IGAD Member States, through the development of models of intervention, in the broader context of the regional integration. In the long term, it is expected to extend decent work opportunities to current and potential migrants within the region, as well as to contribute to regional integration, strengthen the link between economic and job growth, and enhance the social and economic integration of migrants.

This report forms part of the knowledge-generation component of the project and aims to create an evidence base on labour migration and mobility governance in the region. This should contribute to the development of the IGAD Free Movement of Persons Protocol, as well as to building the capacities of Member States to implement the Protocol, once it is adopted. To this end, labour migration and mobility assessments of the IGAD Member States have been undertaken, to gain an overview of how labour migration and mobility are governed by these States, as well as areas that require reinforcement.

The assessments capture:

- ▶ the key policies and laws that regulate labour migration and mobility;
- ▶ the roles and responsibilities of the ministries and agencies whose work touches on labour migration;
- ▶ the involvement of social partners; and
- ▶ the inter-ministerial and national coordination mechanisms on migration.

Comprehensive country assessment reports on Djibouti, Ethiopia, Kenya, Somalia, South Sudan, the Sudan, and Uganda have been developed, and follow the same structure and assessment exercise. This enables the identification of areas of commonality and divergence, as well as where capacities need to be strengthened or policies harmonized to pave the way for the implementation of the IGAD Free Movement of Persons Protocol. Moreover, a regional report captures the findings of the country reports; provides an overview of the governance of labour migration and mobility in the IGAD region; and details recommendations for how it can be advanced. The implementation of these recommendations should support the implementation of the IGAD Free Movement of Persons Protocol and aid countries in meeting IGAD and international labour migration governance standards.

The report commences in chapter 2 with an overview of the analytical framework employed in the study. This is followed by an overview of Kenya and its migration trends in chapter 3. Chapter 4 presents an overview of the roles and responsibilities of the key government ministries and agencies whose work touches on labour migration. Chapter 5 covers Kenya's National Coordination Mechanism on Migration. Chapter 6 is an overview and assessment of Kenya's policies, laws, and practices on labour migration and mobility, as per the analytical framework presented in chapter 2.

The last part of the report contains key recommendations for advancing governance of labour migration in Kenya and the IGAD region, which are derived from the analytical framework assessment. These recommendations, which include policy areas that need to be developed or capacities that need to be built, could be implemented by the Free Movement of Persons and Transhumance in the IGAD Region: Improving Opportunities for Regular Labour Mobility project, or by other actors, partners, or projects.

## 2. Methodology

“

*The organizations interviewed include relevant government ministries, agencies, IGAD Secretariat, international organizations, social partners and civil society organizations.*

The research methodology employed for the assessments conducted in this study consists of interviews with key informants undertaken during field missions to the capitals of seven IGAD countries, for which semi-structured interview questionnaires were used. The organizations interviewed include:

- ▶ relevant government ministries and agencies;
- ▶ the IGAD Secretariat;
- ▶ international organizations (IOs);
- ▶ employers' and workers' organizations; and
- ▶ civil society organizations.

The field research was complemented by desktop research and interviews via Skype/phone. A field mission was undertaken to Nairobi from 16 to 20 April 2018. Appendix 1 contains the list of key informants that were interviewed for this assessment.

In addition, an analytical framework was used to analyse the adherence of national laws, policies, practices, and coordination and consultation mechanisms on labour migration and mobility to the provisions of:

- ▶ the draft IGAD Free Movement of Persons Protocol;
- ▶ the IGAD Regional Migration Policy Framework; and
- ▶ ILO standards on labour migration as put forward in the *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration* (ILO, 2006).

The analytical framework is structured around three pillars, which are all building blocks for enhancing labour migration in the IGAD region:

- ▶ **Pillar I.** Strengthening labour migration governance;
- ▶ **Pillar II.** Advancing opportunities for regulated labour migration and decent work; and
- ▶ **Pillar III.** Enhancing the protection of migrant workers and their families.

Each pillar contains a set of thematic areas with guidelines that contribute towards achieving the respective pillars. These guidelines are derived from the three key documents mentioned above: the ILO Multilateral Framework on Labour Migration; the IGAD Regional Migration Policy Framework; and the draft IGAD Free Movement of Persons Protocol. In order to ease reading of this report, the analytical framework is presented in table 1 below.

In brief outline, the thematic areas of the three pillars are as follows:

- ▶ **Pillar I. Strengthening labour migration governance:**
  1. Capacity to collect, analyse, and share labour migration data;
  2. Coordination on labour migration;
  3. Capacity to formulate and implement policy; and
  4. Regulating employment agency practices.
- ▶ **Pillar II. Advancing opportunities for regulated labour migration and decent work:**
  1. Labour mobility schemes to support labour market needs;
  2. Supporting functions for participation in the labour market, including access to information, education, training, skills recognition, and finance; and
  3. Promoting social integration and inclusion.
- ▶ **Pillar III. Enhancing the protection of migrant workers and their families:**
  1. Protection of migrant workers' human rights;
  2. Social security and social protection;
  3. Labour inspection for migrant workplaces; and
  4. Facilitating reception and return.

In table 1, each thematic area contains a set of guidelines that are used to assess the relevant governance structures and mechanisms in the country. Certain thematic areas contain sub-headings, under which a set of related guidelines are captured to facilitate reading of the report.

In chapter 6 below, each thematic area and sub-heading will be expanded upon through "Overview" and "Assessment" passages. The Overview provides the background information that informed each Assessment, such as the relevant laws and policies. The Assessment contains an evaluation of how Somalia is faring with regards to each sub-heading and its related guidelines. In cases where information is limited, all the information is captured in the Assessment, and an Overview is not provided.

**TABLE 1.** Overview of guidelines related to the pillars and thematic areas of the study<sup>1</sup>

<b>Pillar I. Strengthening labour migration governance</b>
<b>Thematic Area 1. Capacity to collect, analyse, and share labour migration data</b>
<b><i>Labour market information and data: Guidelines</i></b>
<b>ILO Multilateral Framework on Labour Migration</b>
5.1. Establishing systems and structures for periodic, objective labour market analyses that take into account gender issues and that include: <ul style="list-style-type: none"> <li>5.1.1 sectorial, occupational and regional dimensions of labour shortages and their causes, and relevant issues of labour supply;</li> <li>5.1.2 shortages of skilled workers in both origin and destination countries, including in the public, health and education sectors; and</li> <li>5.1.3 long-term impact of demographic trends, especially ageing and population growth, on the demand for and supply of labour.</li> </ul>
<b><i>Labour migration data collection and analysis, and applying it to labour migration policy: Guidelines</i></b>
<b>ILO Multilateral Framework on Labour Migration</b>
3.1. Improving government capacity and structures for collecting and analysing labour migration data, including sex-disaggregated and other data, and applying it to labour migration policy.
<b><i>Sharing of labour market information and labour migration data and analysis at the regional level: Guidelines</i></b>
<b>IGAD Regional Migration Policy Framework</b>
4.2. Regional Cooperation and Harmonization of Labour Migration Policies
<i>Recommended Strategies:</i>
iv. Institute routine data collection, analysis and exchange on labour flows, stock and needs in labour-supply vis-à-vis labour-demand countries in IGAD to eliminate skills mismatch and to maintain proper skills audit.
<b>Thematic Area 2. Coordination on labour migration</b>
<b><i>Coordination of labour migration at national, regional, and continental levels: Guidelines</i></b>
<b>ILO Multilateral Framework on Labour Migration</b>
2.2. Developing intergovernmental dialogue and cooperation on labour migration policy, in consultation with the social partners and civil society and migrant worker organizations.
2.5. Establishing mechanisms for tripartite consultations at regional, international and multilateral levels.
3.5. Collecting and exchanging profiles of good practices on labour migration on a continuing basis.
4.7. Establishing a mechanism to ensure coordination and consultation among all ministries, authorities, and bodies involved with labour migration.

<sup>1</sup> The numbering of the articles and clauses presented in this table are the same as the numbering in the documents they originate from.

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## IGAD Regional Migration Policy Framework

### 4.1. National Labour Migration Policies, Structures and Legislation

#### *Recommended Strategies:*

x. Establish formal national and IGAD-wide social dialogue mechanisms to address migrant labour issues (including social protection and social security benefits, insurance, compensation for employment due to injury and old age pension for labour migrants while working abroad and/or upon their return to the countries of origin).

### 4.2. Regional Cooperation and Harmonization of Labour Migration Policies

#### *Recommended Strategies:*

iii. Hold regular dialogue among IGAD Member States and between them and the Member States of contiguous RECs [regional economic communities] to enhance communication between countries of origin, transit countries, and destination through reviews of national policies and legislation.

## Thematic Area 3. Capacity to formulate and implement policy

### ***Labour migration policy development and implementation: Guidelines***

#### **ILO Multilateral Framework on Labour Migration**

- 4.2. Ensuring coherence between labour migration, employment, education and other national policies, in recognition of the wide social and economic implications of labour migration and in order to promote decent work for all and full, productive and freely chosen employment.
- 4.8. Ensuring that specific structures and mechanisms within these ministries have the necessary competencies and capacities to develop, formulate and implement labour migration policies, including, where possible, a special unit for issues involving migrant workers.
- 15.2. Expanding analyses of the contribution of labour migration and migrant workers to the economies of destination countries, including employment creation, capital formation, social security coverage and social welfare.

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### ***Policies that protect the rights of migrant workers, including bilateral labour agreements and gender-sensitive policies: Guidelines***

#### **ILO Multilateral Framework on Labour Migration**

- 4.4. Implementing policies that ensure that specific vulnerabilities faced by certain groups of migrant workers, including workers in an irregular situation, are addressed.
- 4.5. Ensuring that labour migration policies are gender-sensitive and address the problems and particular abuses women often face in the migration process.
- 5.3. Where appropriate, establishing policies and procedures to facilitate the movement of migrant workers through bilateral, regional or multilateral agreements.

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### ***Ratification and domestication of international labour migration Conventions: Guidelines***

#### **IGAD Regional Migration Policy Framework**

### 4.1. National Labour Migration Policies, Structures and Legislation

#### *Recommended Strategies:*

i. Promote the signing, ratification and domestication by the Member States of international instruments relating to labour (e.g. the ILO [Migration for Employment Convention (Revised), 1949] No. 97 and Migrant Workers (Supplementary Provisions) Convention, 1975] No. 143 and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families) through national legislation.

## Thematic Area 4. Regulating employment agency practices

### ***Employment contracts: Guidelines***

#### **ILO Multilateral Framework on Labour Migration**

- 10.3. Promoting the establishment of written employment contracts to serve as the basis for determining obligations and responsibilities and a mechanism for the registration of such contracts where this is necessary for the protection of migrant workers.
- 13.3. Ensuring that migrant workers receive understandable and enforceable employment contracts.

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### ***Licensing and monitoring of private employment agencies: Guidelines***

#### **ILO Multilateral Framework on Labour Migration**

- 13.1. Providing that recruitment and placement services operate in accordance with a standardized system of licensing or certification established in consultation with employers' and workers' organizations.
- 13.2. Providing that recruitment and placement services respect migrant workers' fundamental principles and rights.
- 13.5. Working to implement legislation and policies containing effective enforcement mechanisms and sanctions to deter unethical practices, including provisions for the prohibition of private employment agencies engaging in unethical practices and the suspension or withdrawal of their licences in case of violation.

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### ***Recruitment and placement fees: Guidelines***

#### **ILO Multilateral Framework on Labour Migration**

- 13.7. Providing that fees or other charges for recruitment and placement are not borne directly or indirectly by migrant workers.

## **Pillar II. Advancing opportunities for regulated labour migration and decent work**

### Thematic Area 1. Labour mobility schemes to support labour market needs

#### ***Rules and regulations governing labour migration and mobility: Guidelines***

#### **ILO Multilateral Framework on Labour Migration**

- 5.2. Establish transparent policies for the admission, employment and residence of migrant workers based on clear criteria, including labour market needs.
- 5.5. Ensuring that temporary work schemes respond to established labour market needs, and that these schemes respect the principle of equal treatment between migrant and national workers.
- 12.3. Simplifying administrative procedures involved in the migration process and reducing processing costs to migrant workers and employers.
- 6.3. Promoting dialogue and consultation with employers' organizations on practical opportunities and challenges they confront in the employment of foreign workers.
- 6.4. Promoting dialogue and consultation with workers' organizations on particular concerns posed by labour migration and their role in assisting migrant workers.

### **Draft IGAD Free Movement Protocol**

Part A: Free Movement of Persons and Labour

Article 3. Free Movement of Workers

3. For the purpose of this Article, the free movement of workers shall entitle a worker to:
  - d. stay in the territory of a Member State for the purpose of employment in accordance with the national laws and administrative procedures governing the employment of workers of that Member State;
8. The national laws and administrative procedures of a Member State shall not apply where the principal aim or effect is to deny citizens of other Member States the employment that has been offered.

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#### ***Circular and return migration: Guidelines***

##### **ILO Multilateral Framework on Labour Migration:**

15.8. Adopting policies to encourage circular and return migration and reintegration into the country of origin, including by promoting temporary labour migration schemes and circulation-friendly visa policies.

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#### ***Labour exchanges and critical skills: Guidelines***

##### **ILO Multilateral Framework on Labour Migration:**

15.7. Adopting measures to mitigate the loss of workers with critical skills, including by establishing guidelines for ethical recruitment.

##### **IGAD Regional Migration Policy Framework**

4.2. Regional Co-operation and Harmonization of Labour Migration Policies

*Recommended Strategies:*

vi. Establish bilateral and multilateral labour exchanges among IGAD Member States and with contiguous non-Member States of neighbouring RECs to employ or deploy temporarily human resources with scarce or desirable skills

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#### ***Establishment and investment: Guidelines***

##### **Draft IGAD Free Movement Protocol:**

Part B: Rights of Establishment and Residence

Article 6. Rights of Establishment

11. For the purposes of this Article, the Member States shall:
  - a. remove the administrative procedures and practices, resulting from national laws or from agreements previously concluded between the Member States, that form an obstacle to the right of establishment;
  - b. progressively remove any administrative procedures and practices resulting from national laws that restrict the right of establishment, in respect of the conditions for:
    - i. setting up agencies, branches or subsidiaries of companies or firms in their territories; and
    - ii. the entry of personnel of the companies or firms registered in another Member State into managerial or supervisory positions in agencies, branches or subsidiaries in that Member State.



## Thematic Area 2. Supporting functions for participation in the labour market, including access to information, education, training, skills recognition, and finance

### ***Disseminating information to migrant workers: Guidelines***

#### **ILO Multilateral Framework on Labour Migration**

12.4. Promoting the participation of employers' and workers' organizations and other relevant non-governmental organizations in disseminating information to migrant workers.

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### ***Education, training, skills recognition, the harmonization of qualifications, and access to finance: Guidelines***

#### **ILO Multilateral Framework on Labour Migration**

14.3. Improving the labour market position of migrant workers, for example, through the provision of vocational training and educational opportunities.

12.6. Promoting the recognition and accreditation of migrant workers' skills and qualifications and, where that is not possible, providing a means to have their skills and qualifications recognized.

#### **IGAD Regional Migration Policy Framework**

4.1. National Labour Migration Policies, Structures and Legislation

##### *Recommended Strategies:*

ix. Facilitate the integration of migrants in the labour market including the education and training sector.

#### **Draft IGAD Free Movement Protocol**

Part A: Free Movement of Persons and Labour

Article 4. Harmonization and Mutual Recognition of Academic and Professional Qualifications

For the purpose of ensuring the free movement of labour, the Member States undertake to:

- a. mutually recognize the academic and professional qualifications granted, experience obtained, requirements met, licences or certifications granted, in other Member States; and
- b. harmonize their curricula, examinations, standards, certification and accreditation of educational and training institutions.

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### ***Facilitating remittances: Guidelines***

#### **ILO Multilateral Framework on Labour Migration**

15.6. Reducing the costs of remittance transfers, including by facilitating accessible financial services, reducing transaction fees, providing tax incentives and promoting greater competition between financial institutions.

## Thematic Area 3. Promoting social integration and inclusion

### ***Public education and awareness-raising campaigns on the contribution of migrants: Guidelines***

#### **ILO Multilateral Framework on Labour Migration**

14.9. Promoting public education and awareness-raising campaigns regarding the contributions migrant workers make to the countries in which they are employed, in order to facilitate their integration into society.

#### **IGAD Regional Migration Policy Framework**

4.1. National Labour Migration Policies, Structures and Legislation

##### *Recommended Strategies:*

vi. Promote integration of migrants by enhancing local citizenry, inclusive policies and engaging with societies in destination countries; address discrimination and xenophobia through civic education and awareness-raising campaigns.

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***Family reunification, and access to employment for family members and education for children: Guidelines***

**ILO Multilateral Framework on Labour Migration**

- 14.10. Facilitating the reunification of family members of migrant workers as far as possible, in accordance with national laws and practice.
- 14.12. Facilitating the integration of migrant workers' children into the national education system.

**Draft IGAD Free Movement Protocol**

Part A: Free Movement of Persons and Labour

Article 3. Free Movement of Workers

5. A worker shall have the right to be accompanied by a spouse and a child, and:
- a spouse who accompanies the worker shall be entitled to be employed as a worker or to engage in any economic activity;
  - as a self-employed person in the territory of that Member State;
  - child who accompanies the worker shall be entitled to be employed as a worker or to engage in any economic activity as a self-employed person in the territory of that Member State subject to the age limits under the national laws of that Member State

**Pillar III. Enhancing the protection of migrant workers and their families**

**Thematic Area 1. Protection of migrant workers' human rights**

***Protecting the human rights of migrants: Guidelines***

**ILO Multilateral Framework on Labour Migration**

- 8.1. Governments should ensure that national laws and practice that promote and protect human rights apply to all migrant workers and that they are respected by all concerned.
- 8.2. Information should be provided to migrant workers on their human rights and obligations and assisting them with defending their rights.
- 8.3. Governments should provide effective enforcement mechanisms for the protection of migrant workers' human rights and provide training on human rights to all government officials involved in migration.
- 10.5. Providing for effective remedies to all migrant workers for violation of their rights, and creating effective and accessible channels for all migrant workers to lodge complaints and seek remedy without discrimination, intimidation or retaliation.
- 10.7. Providing effective sanctions and penalties for all those responsible for violating migrant workers' rights.

**Draft IGAD Free Movement Protocol**

Part A: Free Movement of Persons and Labour

Article 1. Free Movement of Persons

- 1.3. The Member States shall, in accordance with their national laws, guarantee the protection of the citizens of the other Member States while in their territories.

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***Protecting migrants from forced labour and exploitation: Guidelines***

**ILO Multilateral Framework on Labour Migration**

- 8.4.2. Legislation and policies should be adopted, implemented and enforced to protect migrant workers from conditions of exploitation and forced labour, including debt bondage and trafficking, particularly migrant workers in an irregular situation or other groups of migrant workers who are particularly vulnerable to such conditions.

## Thematic Area 2. Social security and social protection

### ***National labour laws and social protection laws applying to migrant workers: Guidelines***

#### **ILO Multilateral Framework on Labour Migration**

9.8. Adopting measures to ensure that national labour legislation and social laws and regulations cover all male and female migrant workers, including domestic workers and other vulnerable groups, in particular in the areas of employment, maternity protection, wages, occupational safety and health and other conditions of work, in accordance with relevant ILO instruments.

### ***Social security coverage and portability: Guidelines***

#### **ILO Multilateral Framework on Labour Migration**

9.9. Entering into bilateral, regional or multilateral agreements to provide social security coverage and benefits, as well as portability of social security entitlements, to regular migrant workers and, as appropriate, to migrant workers in an irregular situation.

#### **Draft IGAD Free Movement Protocol**

Part A: Free Movement of Persons and Labour

Article 3. Free Movement of Workers

3.3. For the purpose of this Article, the free movement of workers shall entitle a worker to:

- f. enjoy the rights and benefits of social security as accorded to the workers of the host Member.

Part B: Rights of Establishment and Residence

Article 6. Rights of Establishment

3. For the purposes of paragraph 1, the right of establishment shall entitle:

- b. a self-employed person who is in the territory of another Member State to join a social security scheme of that Member State in accordance with the national laws of that Member State.

## Thematic Area 3. Labour inspection for migrant workplaces

#### **ILO Multilateral Framework on Labour Migration**

10.1. Extending labour inspection to all workplaces where migrant workers are employed, in order to effectively monitor their working conditions and supervise compliance with employment contracts.

10.2. Ensuring that the labour inspectorate or relevant competent authorities have the necessary resources and that labour inspection staff is adequately trained in addressing migrant workers' rights and in the different needs of men and women migrant workers.

## Thematic Area 4. Facilitating reception and return

#### **ILO Multilateral Framework on Labour Migration**

12.1. Facilitating migrant workers' departure, journey, and reception by providing, in a language they understand, information, training and assistance prior to their departure and on arrival concerning the migration process, their rights and the general conditions of life and work in the destination country.

12.2. Wherever possible facilitate migrant workers' return by providing information, training, and assistance prior to their departure and on arrival in their home country concerning the return process, the journey and reintegration.

### 3. Overview of Kenya and its migration trends

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*Kenya is mainly a destination and transit country for persons in mixed migration flows from East Africa including refugees, irregular and economic migrants and trafficked persons.*

Kenya borders Ethiopia, Somalia, South Sudan, the United Republic of Tanzania, and Uganda and covers a total area of 580,367 square kilometres and has a population of 47,615,739 people. It is the eighth-largest economy in Africa by gross domestic product (GDP), and the economic, financial, and transport hub of East Africa. It has been classified as a lower-middle income country since 2014, and its real GDP growth has averaged over 5 per cent for the last eight years. GDP per capita, based on purchasing power parity, is US\$3,500 for 2017 (*BusinessTech*, 2018; CIA, 2018). Kenya's long-term development plan, Vision 2030, aims to transform Kenya into a middle-income country by 2030. In December 2017 President Kenyatta announced his development priorities for his last term as president. Titled the “Big Four”, he prioritized manufacturing, universal health care, affordable housing, and food security (World Bank, 2018).

Kenya struggles with unemployment and under-employment, which could be as high as 40 per cent. Lack of sufficient infrastructure hampers efforts to reach the target of 8–10 per cent growth per year, which could have a significant impact on unemployment and poverty. Agriculture, which is vulnerable to drought, continues to be the mainstay of the economy, constituting one third of GDP. Approximately 75 per cent of the population is active in this sector, on at least a part-time basis (CIA, 2018). Tourism is another important sector for the economy and has been affected by terrorist attacks. According to the African Economic Outlook Report of the African Development Bank (2018), Kenya's economy remains resilient due to its diversity, with services contributing the most to GDP growth. This trend is expected to continue due to Kenya's position as the regional capital for information and communication technology, as well as financial and transportation services. Planned investments in rail, roads, and the Jomo Kenyatta Airport are also expected to drive growth.

Kenya is mainly a destination and transit country for people in mixed migration flows from East Africa, including refugees, irregular and economic migrants, and trafficked persons (RMMS, 2017). Migrants transit Kenya to reach South Africa, the Middle East and North Africa, West Africa, Europe, and North America. Most immigrants in Kenya are from African countries, with the majority being from East African countries (IOM, 2015, p. 16). Labour migrants from Asian countries, such as Bangladesh, India, and Pakistan, are also found in Kenya (MGSOG, 2017, p. 6). The Department of Immigration Services (DIS) collects data on regular labour migrants who have been issued work permits, but does not make this data publicly available, and the number of regular migrant workers in Kenya is therefore not known. Data on internal migration indicates that rural-to-urban migration, especially to Nairobi, is the most significant form and is largely for economic opportunities (MGSOG, 2017, p. 7).

Kenya is the fourth-largest refugee hosting country in Africa (Betts, Omata, and Sterck, 2018, p. 6). As of 28 February 2018, Kenya was hosting 483,597 refugees and asylum-seekers (UNHCR, 2018a). The majority of refugees are from Somalia (58.2 per cent); while South Sudanese (22.9 per cent), Congolese (7.3 per cent), and Ethiopians (5.7 per cent) make up the other major nationalities (UNHCR, 2018b). Kenya implements a refugee encampment policy. Refugees require work permits to engage in wage-earning employment, and these permits are issued free of charge. Work permits are rarely issued, however, and therefore the economic activities of refugees are largely limited to the informal sector (Law Library of Congress, 2016).

Following the 2016 adoption of the New York Declaration on Refugees and Migrants, Kenya has agreed to implement the Comprehensive Refugee Response Framework (CRRF), which, *inter alia*, aims to enhance the self-reliance of refugees. Kenya's Refugee Affairs Secretariat is working on a roadmap to guide the implementation of the CRRF and on a national action plan to roll out the 2017 IGAD Nairobi Declaration on Durable Solutions for Somali Refugees and Reintegration of Returnees in Somalia (UNHCR, 2018c). In November 2017 President Kenyatta rejected a bill that would have given refugees living in camps the right to work and use land for business and farming. He requested that the bill be referred back to Parliament to allow for public input, in accordance with the Constitution (Owino, 2017).

Regarding human trafficking, Kenya is classified as a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking (US Department of State, 2017). The forced labour of children takes place in domestic service, agriculture, fishing, cattle herding, street vending, and begging. Both girls and boys are exploited by the commercial sex trade. Kenyan women are exploited by Ugandan and Nigerian traffickers for forced prostitution in Thailand; while men and boys may be forced to join criminal and terrorist groups in Somalia, on the basis of false promises of employment elsewhere (US Department of State, 2017).

In contrast to a number of its neighbours, Kenya is to a lesser extent a country of origin for migrants in mixed migration flows. Kenyan emigrants stand out for being skilled and educated, and for leaving for employment abroad through regular means. The countries and regions they travel to for education and work include Uganda, the United Republic of Tanzania, Botswana, Lesotho, South Africa, the United States, Europe, the Arabian Peninsula,

and the Middle East (RMMS, 2017). According to the Government's 2014 Diaspora Policy, the number of Kenyans abroad is estimated to be about 3 million, and continues to increase. Brain drain of medical practitioners to South Africa, the United Kingdom, and the United States is a concern (Firsing, 2016). Another dilemma is Kenyan migrant workers in the Gulf countries facing deskilling – previously acquired skills are lost over time as migrants work in occupations below their skill levels. However, labour migration has also contributed to Kenya's socio-economic development, with remittances constituting 3 per cent of GDP in 2015 (Malit and Al Youha, 2016a).

Low-skilled Kenyan migrant workers mostly migrate to the Middle East and the Gulf countries for work, as wages are generally much higher than in Africa. Such movements are facilitated through private employment agencies (PEAs). Middle Eastern countries tend to encourage low-skilled and low-cost labour migration from East Africa, especially given the needs of the upcoming United Arab Emirates Expo in 2020 and the Qatar World Cup in 2022 (Malit and Al Youha, 2016a). Unemployment in Kenya and in neighbouring countries, and difficulty in gaining access to developed countries, are further factors driving migration flows to the Middle East. Kenyans are employed as domestic workers, cleaners, construction workers, hospitality servers, security officers, and taxi drivers in these countries. Between 100,000 to 300,000 Kenyan migrants are estimated to be in the Gulf countries (Malit and Al Youha, 2016b). The *kafala* sponsorship system, whereby migrant workers' rights to work and reside legally in their host countries are tied to one employer, is regarded as a major contributing factor to the exploitation of workers in the Gulf countries (Langat, 2017). Due to reports of abuse and trafficking of Kenyan migrants, Kenya has had two labour migration bans to these countries – the most recent of which was lifted in 2018. In an effort to protect its citizens, Kenya has issued new registration requirements and a code of conduct for PEAs (US Department of State, 2017). It has also signed bilateral labour agreements (BLAs) with Qatar, Saudi Arabia, and the United Arab Emirates, and posted labour attachés to these countries to ensure the protection of migrant workers.

Kenya is a Partner State of the East African Community (EAC), which has five other Partner States: Burundi, Rwanda, South Sudan, the United Republic of Tanzania, and Uganda. The free movement of persons among EAC Partner States is provided for by the Treaty for the Establishment of the EAC (1999) and the 2009 Protocol for the Establishment of the EAC Common Market (CMP). The citizens of Partner States benefit from visa-free entry; access to each country's labour markets; and the right to residence and establishment, according to certain criteria. Through this framework, regular labour mobility and migration takes place between Kenya and the other EAC Partner States.

Kenya is also a member of the Common Market for East and Southern Africa (COMESA), which has 21 Member States. COMESA's Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements (1984) is in force, but is not fully implemented. The COMESA Protocol on Free Movement of Persons, Labour, Services, the Right of Establishment and Residence was adopted in 2001, but has only been ratified by Burundi and signed by Kenya, Rwanda, and Zimbabwe (COMESA, 2017, p. 4). Moreover, Kenya is a member of IGAD, which is developing a protocol to allow for the free movement of persons among its members.

## 4. Overview of the roles and responsibilities of the key ministries, agencies, and tripartite organizations

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*The ministries, departments and agencies and social partners work together to provide policy guidelines, regulate and protect the migrant workers.*

### 4.1 Government ministries and agencies

#### Ministry of Interior and Coordination of National Government (MOICNG)

The Directorate of Immigration and Registration of Persons falls within the MOICNG, and its mandate covers population registration, maintenance of an inclusive population register, migration and border management, and refugee welfare supervision.

The Directorate contains the following departments:

- ▶ The Department of Immigration Services (DIS) oversees immigration procedures for incoming migrant workers, and its responsibilities include controlling the entry and residence of foreign nationals, and issuing work permits and other types of permits and passes. The DIS is also responsible for formulating national migration policy and reviewing immigration laws and regulations, and hosts the National Coordination Mechanism on Migration (NCM) Secretariat.
- ▶ The Civil Registration Department, which records birth and deaths.
- ▶ The National Registration Bureau, which issues identity cards.
- ▶ The Integrated Population Registration System (IPRS) Department, which manages the national population register that aims to capture information of all Kenyan citizens and registered resident foreign nationals in Kenya (MOICNG, 2015).

- ▶ The Department of Refugee Affairs was established by the Refugee Act, 2006 and coordinates refugee service provision, including refugee status determination; issuing refugee identity cards, movement passes and travel documents and camp management (MIEUX, 2017: 12). The Department of Refugee Affairs collaborates with United Nations High Commissioner for Refugees (UNHCR) on refugee management, which is governed by the Refugee Act and the Refugee Regulations, 2009.

## **Ministry of Labour and Social Protection (MOLSP)**

Kenyan workers and regular migrant workers in Kenya fall under the remit of the MOLSP. The Ministry has two state departments that deal, respectively, with labour and social protection. The Labour Department, in the State Department for Labour, is responsible for implementing the three fundamental labour laws: the Employment Act, 2007; the Labour Institutions Act, 2007; and the Labour Relations Act, 2007. It formulates and implements national labour law and policy, promotes decent work for all and harmonious industrial labour relations, and implements tripartite dialogue mechanisms (MOLSP, 2016a).

The National Human Resource Planning and Development Directorate is mandated to collect and analyse data on manpower supply and demand; on the basis of which it provides labour market information that informs human resource development policies and strategies. Moreover, it is tasked with the development and maintenance of a national skills inventory and guidelines for skills development (MOLSP, 2016b).

The Registrar of Trade Unions, in the State Department for Labour, registers trade unions and their branches.

The Directorate of Occupational Safety and Health Services enforces the Occupational Safety and Health (OSH) Act, 2007. It is tasked with ensuring the safety, health, and welfare of all workers in all workplaces, and undertakes related inspection in workplaces. Its functions also include medical surveillance of workers; providing related advice, training, and awareness raising on occupational safety and health; and facilitating workers' compensation for work-related injuries and diseases in accordance with the provisions of the Work Injuries Benefits Act, 2007 (MOLSP, 2016c).

The National Employment Authority (NEA) is a semi-autonomous government authority that falls under the MOLSP. The NEA provides public employment services, for which it registers Kenyan jobseekers and links them with job opportunities locally and internationally; and provides advisory services on employment policy issues. It registers and regulates PEAs; provides information on registered employment agencies; verifies job offers; ensures implementation of pre-departure training; and promotes the protection of Kenyan labour migrants. It also provides internship services to youths, including seeking out opportunities and placing applicants in internship positions (NEA, 2018). The NEA also supports negotiations on BLAs.

The State Department for Social Protection is, *inter alia*, tasked with social protection policy; policy and programmes for persons with disabilities; community development policy; social assistance programmes; children's welfare; and counter-trafficking (Government of Kenya, 2018, p. 55). The Department of Children Services falls within this State Department and is mandated by the Children Act, 2001 to safeguard and protect the rights and welfare of



children. The Department of Children Services hosts the Counter-Trafficking in Persons Advisory Committee.

## The Ministry of Foreign Affairs (MOFA)

The MOFA is in charge of Kenya's foreign policy and is the lead agency for negotiating international agreements, including BLAs. It manages Kenya's embassies and missions abroad. The MOLSP nominates its officers that are seconded to the MOFA's embassies as labour attachés.

The MOFA also coordinates cooperation with IGAD, and the focal point for IGAD is in the MOFA.

The Ministry's Directorate of Diaspora and Consular Affairs supports Kenyans abroad, inter alia through emergency assistance and authentication of documents, and leads the implementation of the Diaspora Policy (IOM, 2015, p. 138). The Directorate is also the focal point for the African Institute for Remittances (AIR), which is hosted by Kenya. The AIR is an African Union (AU) body, and works to reduce the cost of remittances and harness remittances for Africa's development.

## National Treasury and Planning

The Central Bank of Kenya is housed by the National Treasury. The Central Bank formulates monetary policy and foreign exchange policies; holds and manages foreign exchange reserves; issues currency; and is the banker, adviser, and fiscal agent of the Government (Central Bank of Kenya, 2017). The Central Bank conducts a survey on remittance inflows through formal channels every month, which it makes available on its website<sup>2</sup>.

The State Department for Planning also falls within this Ministry. It leads national and sectoral development planning, national statistics management, national census and housing surveys, and population policy management. It houses the Kenya National Bureau of Statistics (KNBS) and the National Council for Population and Development (NCPD).

The KNBS is mandated by the Statistics Act, 2006, to serve as the main government agency for collecting, analysing, and disseminating statistical data in Kenya. It conducts the Population and Housing Census every ten years; conducts labour force surveys; maintains a socio-economic database; establishes and promotes statistical standards, best practices, and methods; and plans, coordinates, and supervises official statistical programmes (KNBS, 2018).

The NCPD is a state corporation that develops, coordinates, and implements population and development policies and programmes. Its mandate includes research and analyses of population and development topics; assessing the impact of programmes policies in these areas; and advising the government accordingly, as well as creating public awareness on related matters (NCPD, n.d.).

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<sup>2</sup> See <https://www.centralbank.go.ke/diaspora-remittances-2/>.

## **The Ministry of East African Community and Regional Development**

The Ministry hosts the State Department for the EAC, which leads cooperation with the EAC and EAC institutions, such as the Inter-University Council for East Africa. The State Department coordinates EAC regional programmes and projects, and the implementation of the EAC Treaty.

## **The Ministry of Public Service, Youth and Gender**

The Ministry works on youth and women empowerment as well as gender equity, and houses the Youth Enterprise Development Fund (YEDF).

The YEDF is a state corporation and a flagship project of Vision 2030. It works to create employment opportunities for youths through entrepreneurship, by providing affordable financial and business development support services (YEDF, 2016). A “youth” is defined in Kenya as a person between the ages of 15 to 30.

Moreover, the YEDF runs the Youth Employment Scheme abroad, whereby it helps youths to secure employment abroad through partnerships with PEAs. The type of work performed through this Scheme includes domestic work and driving. Between 2008 and 2013, 13,535 youths left Kenya for employment abroad through this Scheme (IOM, 2015, p. 19).

## **Kenya Investment Authority (KenInvest)**

KenInvest promotes investment in Kenya and was established by the Investment Promotion Act No.6, 2004. It facilitates new investment projects and supports existing ones, and its services include assistance to investors in obtaining work permits.

## **State Law Office and Department of Justice**

Executive Order No 1 of 2016 changed the name of the Office of Attorney General and Department of Justice to the State Law Office and Department of Justice. However, it is still commonly referred to as the Attorney General. The State Law Office is the Government’s main legal adviser, and represents the Government in non-criminal legal proceedings to which the Government is a party. The State Law Office’s mandate includes: negotiating, drafting, and vetting legal instruments; developing policy on the administration of justice; and supervising legal matters related to the registration of companies, business names, and societies (State Law Office and Department of Justice, 2016). It supports the MOFA in the development of international agreements, including those related to labour migration.

## 4.2 Workers' and employers' organizations

Kenya's 2010 Constitution (article 41(c)) grants every worker the right to form, join, and participate in activities and programmes of a trade union. It grants every employer the right to form and join an employers' organization, and to participate in the activities and programmes of an employers' organization.

### Central Organizations of Trade Unions (Kenya) (COTU-K)

The COTU-K is an umbrella organization of 44 trade unions, and represents workers in the formal and informal sector. It participates in the tripartite structure in Kenya and is tasked with defending the rights of workers. According to the COTU-K, most migrant workers are active in Kenya's informal economy and do not participate in trade unions. Their interests are represented through their own groups or associations.

The COTU-K is a member of the East African Trade Union Confederation (EATUC), a regional workers' body that promotes the interests of workers in the EAC and advocates for the free movement of persons. It is headquartered in Arusha, the United Republic of Tanzania.

### Federation of Kenya Employers (FKE)

The FKE is Kenya's largest employers' organization, and works to promote sound industrial and labour relations. Its services include:

- ▶ legal advice on labour issues;
- ▶ developing collective bargaining agreements;
- ▶ representation at the MOLSP and in tripartite consultations;
- ▶ advocacy and lobbying on policies and regulations that govern employers; and
- ▶ training on labour law and other relevant subjects.

The FKE has members that are foreign companies, including from China, Japan, the Netherlands, and the United Kingdom, and may assist these companies with obtaining work permits for migrant workers, as well as promote their concerns in tripartite consultation.

The FKE participates in the East African Employers Organisation (EAEO), which represents employers' views at the EAC and promotes the interests of employers at the regional level. It is headquartered in Arusha, the United Republic of Tanzania (EAEO, 2016).

## 5. National Coordination Mechanism on Migration

“

*The NCM is an inter-agency platform on migration issues with aspirations towards being anchored in legal framework.*

The National Coordination Mechanism on Migration (NCM) was launched in 2016 and serves as a government-led inter-agency platform on migration issues. It enjoys strong government ownership and broad participation by government agencies. The NCM operates on the basis of terms of reference and an annual work plan, and is working towards anchoring the NCM in a legal framework. It meets at least quarterly and drives inter-agency coordination, collaboration, and information sharing on migration issues at the national level. DIS hosts the NCM Secretariat, which coordinates its activities and oversees the activities of its technical working groups (TWGs) (NCM, n.d.).

The members of the NCM include the:

- ▶ Immigration Department (MOICNG);
- ▶ Refugee Affairs Secretariat (MOICNG);
- ▶ Border Management Secretariat (MOICNG);
- ▶ National Intelligence Service (MOICNG);
- ▶ National Police Service and National Crime Research Centre (MOICNG)
- ▶ Diaspora and Consular Affairs Directorate (MOFA);
- ▶ NEA (MOLSP);
- ▶ Department for Labour (MOLSP);
- ▶ State Department for Social Protection (MOLSP);
- ▶ Ministry of Health;
- ▶ Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works;
- ▶ Office of the Director of Public Prosecutions;
- ▶ State Law Office (formerly the Office of the Attorney General);
- ▶ National Treasury and Planning;

- ▶ Ministry of Tourism and Wildlife;
- ▶ NCPD;
- ▶ National Counter Terrorism Centre;
- ▶ Civil Registration Services;
- ▶ KNBS;
- ▶ YEDF;
- ▶ Central Bank of Kenya;
- ▶ Tourism Research Institute;
- ▶ Council of Governors;
- ▶ Senate Assembly;
- ▶ National Assembly;
- ▶ International Organization for Migration (IOM);
- ▶ African Migration and Development Policy Centre; and
- ▶ University of Nairobi.

The NCM has six TWGs, with the following members:

- ▶ **Labour Migration and Diaspora Affairs** – MOFA; NEA; Department of Labour; trade unions<sup>3</sup>; and the NCM Secretariat/DIS.
- ▶ **Migration Policy; Research and Data Management** – National Registration Bureau; Civil Registration Services; IPRS; National Crime Research Centre; KNBS; NCPD; members from academia; and the NCM Secretariat/DIS.
- ▶ **Forced Migration and Social Protection** – State Department for Social Protection; Refugee Secretariat Office of the Director of Public Prosecutions; State Law Office; and the NCM Secretariat/DIS.
- ▶ **Migration and National Security** – MOICNG; National Intelligence Service; National Police Service; Border Management Secretariat; National Counter Terrorism Centre; and the NCM Secretariat/DIS.
- ▶ **Migration and Development** – National Treasury and Planning; Council of Governors; National Environment Management Authority; Ministry of Health; Kenya National Commission on Human Rights; Ministry of Tourism and Wildlife; and the NCM Secretariat/DIS.
- ▶ **Monitoring, Evaluation and Results** – one representative seconded from each of the other TWGs.

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<sup>3</sup> According to the NCM Secretariat, trade unions are listed as members of this TWG, but have not participated much in NCM meetings due to human resource constraints. However, the FKE is an active member of the NCM.

## 6. Analytical framework analysis

### 6.1 Pillar I. Strengthening labour migration governance

#### 6.1.1 Thematic Area 1. Capacity to collect and analyse labour migration data

##### 6.1.1.1 Labour market information and data

###### *Overview*

Kenya's Labour Market Information System (KLMIS) is available online,<sup>4</sup> and contains information on:

- ▶ the skills that are in high demand;
- ▶ available vacancies within a selected reference period;
- ▶ emerging occupations; and
- ▶ labour market indicators.

These data are derived from economic surveys carried out by the KNBS annually. The labour market indicators include employment in the informal sector; active population by sex; and employment absorption rates by sex (KLMIS, 2018a).

Under labour supply, information on the skilled manpower joining the labour market is available. It includes information on graduates from various training institutions, skills inventory information, and skilled manpower distribution in both the public and private sectors. The analysis of the types, levels, and quantities of skilled manpower is based on the Kenya National Occupational Classification Standards categorization and coding (KLMIS, 2018b).

###### *Assessment*

The KLMIS stands out as a good practice in the IGAD region in terms of making updated labour market analysis available to the public. It should be further enhanced to capture sectorial, occupational and regional labour shortages. This information could be used to develop strategies to address skills shortages, such as the encouragement of targeted skills development and attracting migrant workers to certain sectors. In such strategies the long-term impact of demographic trends should be taken into account, as well as labour demand in other countries.

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<sup>4</sup> See <https://www.labourmarket.go.ke>.

### 6.1.1.2 Labour migration data collection and analysis, and applying it to labour migration policy

#### *Overview*

The European Union (EU)-funded International Centre for Migration Policy Development Migration EU Expertise (MIEUX)<sup>5</sup> Action for Kenya on data management aims to bolster Kenya's migration data management in line with regional and international standards. To this end, it is working with the Kenyan authorities on the development of standard operating procedures for migration data collection, analysis, and sharing, as well as a road map for better collection, analysis, and processing of data at border crossing points. The standard operating procedures and roadmap are expected to be adopted in 2019.

As part of this action, MIEUX conducted a fact-finding mission to assess the state of play of migration data, collection, analysis, and sharing in 2017. It concluded that Kenyan authorities gather substantial amounts of migration data (in comparison to other countries at a similar stage of development) through established data collection mechanisms. In addition, the registration system for foreign nationals residing and working in Kenya is considered fairly strong, and is renewed and reviewed regularly (MIEUX, 2017).

The Kenya Citizens and Foreign Nationals Management Service Act, 2011, established the Kenya Citizens and Foreign Nationals Management Service, which provides for the creation and maintenance of a national population register and the administration of the laws relating to births and deaths; identification and registration of citizens, immigration and refugees; and for connected purposes (chapter 172). The Directorate of Immigration and Registration of Persons is responsible for population registration and maintenance of the population register. The Integrated Population Registration System (IPRS) has been in existence since 2012 and collects data from the electronic databases of numerous government agencies, including: a database on birth and death; a database of citizenship registration; a database of passports and ID documents; and a foreign citizens register. Foreigners who have been granted a residence permit have recently been included in the IPRS. An estimated 80–85 per cent of the Kenyan population is represented in the IPRS. While automatic updates of electronic sources take place, not all relevant data is found in the system and historical data is absent (MIEUX, 2017).

The DIS collects data on citizens and regular migrant workers in Kenya on the basis of the Kenya Citizenship and Immigration Regulations, 2012. The Regulations specify in article 51 that the following information of foreign nationals who are employed in Kenya should be recorded:

- ▶ name of employee;
- ▶ passport/travel document no.;
- ▶ nationality;
- ▶ place and date of birth;
- ▶ date employed;

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<sup>5</sup> MIEUX is a migration experts' facility that supports partner countries to better manage migration and mobility through the provision of rapid, tailor-made technical assistance. It is a joint initiative funded by the EU and implemented by the International Centre for Migration Policy Development Migration.

- ▶ place of employment/duty station;
- ▶ job title;
- ▶ date of cessation of employment;
- ▶ date of departure of employee from Kenya;
- ▶ place of residence of employee while in Kenya;
- ▶ details of dependents, including spouse and children; and
- ▶ class of permit or pass held.

This data is currently only stored in hard copy, and analysed ad hoc when the need arises, and only for the internal use of the Ministry. Data is shared only with the security agencies for security purposes, and data on entries into Kenya is shared with the Ministry of Tourism and Wildlife. Electronic databases from which data can be extracted to produce statistics do not exist (MIEUX, 2017, pp. 14–15).

Data of emigration stocks and flows is deficient and originates from the PISCES system collected at border crossing points, and from Kenyans abroad voluntarily registering with their embassies (MIEUX, 2017, p. 32). The PISCES border control system captures information regarding travellers, including the dates of entering and exiting the country, and the bio-data information of the travel document, such as the document number. This data is extracted in Microsoft Excel and used internally by DIS, and is not shared or published (MIEUX, 2017, p. 16).

The most recent National Labour Force Survey was conducted in 1999. It did not contain migration-related questions apart from place of birth (MIEUX, 2017, p. 13). The last census – the 2009 Population and Housing Census – contained questions on international migration. Its key findings with regards to immigrants in Kenya is that they constitute less than 1 per cent of the population, and the majority come from African countries and have attained only primary schooling. The survey report recommends that in order to achieve the goals of Vision 2030 a mechanism needs to be developed to attract more skilled immigrants for the sectors where expertise is needed (KNBS, 2012, p. 43). There is, however, no evidence that this policy recommendation has been taken up.

### ***Assessment***

Kenya gathers significant amounts of migration data. However, there is insufficient systematic data analyses and sharing of data among government agencies with a view to applying it to labour migration policy development and implementation. The draft 2017 National Labour Migration Policy and Strategy for Kenya recognizes this shortcoming. The standard operating procedures for migration data collection, analysis, and sharing that are being developed should address it. So too should the draft National Migration Policy, which is being finetuned and expected to subsume the draft 2017 National Labour Migration Policy and Strategy.



### 6.1.1.3 Sharing of labour market information and labour migration data and analysis at the regional level

#### *Overview*

Labour flows and skill shortages are at times discussed in IGAD meetings, such as the Regional Consultative Process, but there are no systems in place for regularly sharing data on labour supply and demand between Kenya and other IGAD Member States. There are also no known efforts to identify skills gaps with a view to attracting IGAD Member States' citizens to work in Kenya. In Africa, and outside of IGAD, Kenya has a BLA with Rwanda, and has supplied teachers to that country following the change in its official language policy from French to English.

In the EAC region, national manpower surveys are irregular and incomplete, resulting in a shortfall of data on skill stocks, characteristics, distribution, and supply and demand (Alper et al., 2016, p. 16). There is also no established regional labour market information system (Ogalo, 2012, p. 33). Information on national labour supply and demand may be exchanged ad hoc or at meetings between the EAC Partner States, but there are no routine exchanges on labour flows, stocks, and needs in labour supply vis-à-vis labour demand in the EAC region. The COMESA region is less integrated than the EAC, and little labour market data is shared, and not on a routine basis. Information may be exchanged ad hoc at COMESA meetings.

#### *Assessment*

Routine data analysis and exchange of labour flows, stocks, and needs between Kenya and other IGAD Member States is not undertaken, and needs to be put in place.

## 6.1.2 Thematic Area 2. Coordination on labour migration

### 6.1.2.1 Coordination of labour migration at the national, regional, and continental levels

#### *Overview*

The NCM serves as the national platform for coordination on migration issues, and enjoys broad participation and ownership by government agencies. Social partners do not participate in the NCM. There is an NCM TWG on Labour Migration and Diaspora Affairs, but interviews with key informants suggest that NCM discussions have mostly focused on low-skilled labour migration to the Middle East and Gulf countries, due to the acute protection concerns of these migrant workers. Labour migration in broader terms, and to other regions and from other regions, have not featured much in the deliberations or activities of the NCM.

Tripartite consultation functions well at the national level, and takes place through a number of boards in which the FKE and COTU-K participate. These include the:

- ▶ Higher Education Loans Board;
- ▶ National Social Security Fund Board;
- ▶ Salary and Remuneration Commission;

- ▶ National Bank Board;
- ▶ National Health Insurance Fund; and
- ▶ National Labour Board, which is the leading mechanism for tripartite consultation, and which advises the Cabinet Secretary for Labour.

The composition and functions of the National Labour Board is set out in the Labour Institutions Act, 2007. According to article 7(2), the Minister responsible for labour will, in consultation with the Board, advise the Government on the issuance of work permits to migrant workers. In addition, a Task Force under the Board, which holds tripartite meetings, has concerned itself with issues related to the labour migration of nationals to the Middle East. There are no specific coordination mechanisms between the NCM and these bodies.

Tripartite consultation takes place at the EAC level. Labour ministries of the Partner States, the EATUC, and the EAEO participate in such consultations, though formal tripartite structures have not been established. The EATUC and EAEO collaborate on a number of issues, and have collectively brought to the attention of the EAC Secretariat and the East African Legislative Assembly issues of common concern, through research and advocacy. These include obstacles to the free movement of persons and the recommendation to standardize work permit applications across the EAC.

Bilateral and multilateral exchanges of labour market information, and the collecting and exchanging of profiles of good practices on labour migration, are not routinely shared between Kenya and the IGAD Member States, or other countries. Information on these topics may be shared at AU, EAC, COMESA, and IGAD meetings, and in the case of COMESA and IGAD, through their regional consultative processes. The Joint Labour Migration Programme, which is led by the AU and implemented by the ILO, IOM, and the United Nations Economic Commission for Africa (UNECA), shares information on these issues at some of its meetings.

While there are no routine meetings between IGAD Member States and the Member States of neighbouring regional economic communities, the AU has increasingly focused on migration – including labour migration – and serves as a useful forum for bringing together origin, transit, and destination countries. In the past two years it has held numerous migration consultations as it reviewed the AU Migration Policy Framework; developed the AU Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Establishment; and cultivated inputs for the Global Compact on Migration. Moreover, the implementation of the revised AU Migration Policy Framework for Africa and its Action Plan (2018–2030), which has a strong focus on labour migration and the free movement of persons, commenced in 2018. In addition, the African Labour Migration Advisory Committee was inaugurated in May 2018 to promote and protect the rights of migrant workers and members of their families across the continent. Participants of the Committee include representative of the regional economic communities, AU bodies, the ILO, IOM, UNECA, and social partners. The AU is therefore expected to continue to serve as central forum for exchanges on labour migration law, policies, and practice.

## **Assessment**

The NCM is well established, and should enhance its consultations on international labour migration beyond labour migration to the Middle East and Gulf countries. Social partners should participate in the NCM.

Tripartite consultation takes place at the EAC level and should be further formalized. The successful collaboration of the EATUC and EAEO with the EAC stands out as a best practice. It should be replicated at the IGAD level. The Horn of Africa Confederation of Trade Unions was recently formed and should establish a partnership with IGAD. A regional employers' organization should also be formed and establish a partnership with IGAD. Such collaboration could assist in pinpointing impediments to the free movement of persons in the IGAD region and devising workable solutions, as well as enhancing protection for people on the move.

Moreover, the sharing of labour market information and profiles of good practices on labour migration should be instituted in existing fora, such as the IGAD Regional Consultative Process, the COMESA Regional Consultative Process, EAC meetings, AU meetings, and meetings of the Joint Labour Migration Programme.

### **6.1.3 Thematic Area 3. Capacity to formulate and implement policy**

#### **6.1.3.1 Labour migration policy development and implementation**

##### **Overview**

Kenya Vision 2030 serves as the country's development plan for 2008–2030 and was developed through an inclusive participatory process. It is based on three pillars – economic, social, and political – and is to be implemented through successive five-year medium-term plans (Government of Kenya, 2007, p. 1). While references are made to drawing in more remittances from Kenyans abroad, labour migration is not broadly addressed in Kenya Vision 2030. The Medium Term Plan for the period 2018–2022 is not yet available, and while the Concept Note on the Medium Term Plan 2018–2022 addresses national labour concerns, it does not make reference to international labour migration.

Kenya has a draft labour migration policy, which was formulated a decade ago with the support of the IOM, but never officially adopted. In 2017, the NEA, in collaboration with other agencies, including the MOLSP, the MOICNG, the Bureau of Statistics, the MOFA, and the Ministry of Public Service, Youth, and Gender Affairs, developed another document – the draft National Labour Migration Policy and Strategy for Kenya. It aims to “manage labour migration for the benefit of migrant workers and their families and provide up to date Labour Market Information to inform ... [the] development of human resource development policies and strategies” (draft National Labour Migration Policy and Strategy for Kenya, 2017, p. 5).

Moreover, the NCM plans to review Kenya's 2015 Migration Profile and use its findings to complete the draft National Migration Policy (NCM, 2017, p. 4). During an interview for this study, the NCM Secretariat indicated that policy coherence between different issue areas related to migration will be facilitated by the National Migration Policy. At the time of writing,

the Policy was not publicly available, and could not be reviewed for this study. Therefore, the extent to which it is coherent with other national policies could not be assessed. According to the NCM Secretariat, the National Migration Policy will subsume a number of national policies, including the Diaspora Policy and the draft National Labour Migration Policy and Strategy for Kenya. The EAC is also reportedly developing a labour migration policy, which should be taken into account in the development of the National Migration Policy.

The draft National Labour Migration Policy and Strategy for Kenya highlights that labour migration governance is impeded by the uncoordinated and fragmented administration of labour migration, which is dealt with by various state agencies. There is currently no special unit to address migrant workers' concerns. Migrant workers can appeal to the same bodies and mechanisms that Kenyan workers appeal to, such as the labour courts. The Government should address the challenge of uncoordinated labour migration governance in the National Migration Policy, through highlighting the roles and responsibilities of the different agencies and the necessary coordination mechanism.

Moreover, the draft National Labour Migration Policy and Strategy points out that the institutions managing labour migration lack sufficient human resources and the financial and infrastructure capacities for effective labour migration governance. It will therefore also be important to make the necessary resources available to ensure the effective implementation of the National Migration Policy and its labour migration policy component.

In addition, policy development and implementation need to be informed by a strategic and coherent approach to research that ensures a solid evidence base is produced to inform all policy areas. The draft National Labour Migration Policy and Strategy for Kenya calls for linkages with research institutions and for providing these institutions with incentives to conduct studies on labour migration issues, which would in turn inform policy development.

Currently ad hoc research on migration and development issues in Kenya is being undertaken by research outfits, NGOs, and IOs. A comprehensive research agenda should be developed, and captured in the National Migration Policy. Areas to be researched should include the contribution that labour migration and migrant workers make to Kenya, beyond remittances, such as employment creation, capital formation, and supporting social welfare.

In order to build the capacity of government officials engaged in migration management, the NCM is working on the establishment of the Kenya Institute of Migration Studies. It will offer a postgraduate diploma on migration studies, in partnership with the University of Nairobi. The German development agency GIZ has been supporting this initiative through the EUTF and the German Federal Ministry of Economic Cooperation and Development (BMZ)-funded Better Migration Management Programme. The Programme supported the development of a draft curriculum, which was produced by the University of Maastricht, and subsequently adapted at a workshop in February 2018, in which representatives from the Kenya School of Government, DIS, University of Maastricht, IOM, GIZ, and subject-matter experts participated. The curriculum is to be certified by the Kenya Council of University Education (EUTF, 2018).

The postgraduate diploma course to be offered by the Kenya Institute of Migration Studies will include an introduction to migration studies, legal issues in migration, forced migration, irregular migration, diaspora and diaspora engagement, security and border management,

research methods in migration, effects of migration in the origin and the destination country, data and information management, and migration policy and governance. The course will be open to mid-level managers at the DIS, as well as other government officials from Kenya and other IGAD Member States (EUTF, 2018). The course commenced in January 2019. In order to support effective labour migration policy development and implementation, it is recommended that the course also covers the key tenets of labour migration governance, such as bilateral labour agreements; the protection of migrant workers; and social integration.

### ***Assessment***

Labour migration policy objectives are captured in the draft National Labour Migration Policy and Strategy for Kenya, which will be subsumed in the National Migration Policy that is being developed. The National Migration Policy should detail policy coherence with other policy areas, such as employment, education, health, trade, and economic development and integration. Moreover, in order to ensure policy coherence between the labour migration policy objectives of the National Migration Policy and other national policies and issue areas, Kenya's Medium Term Plan for the period 2018–2022 and successive Medium Term Plans should explicitly highlight these linkages. It should also point out strategies to facilitate synergies between the different policy areas. Furthermore, effective monitoring and continued coordination between the relevant government agencies will be important to ensure that policy coherence is anchored in the implementation of strategies and activities. The NCM could serve as an important mechanism to ensure policy coherence.

The draft National Labour Migration Policy and Strategy for Kenya recognizes the need to strengthen the capacities of the agencies engaged in labour migration management and their coordination. The Kenya Institute of Migration Studies can serve to build the knowledge and capacities of government officials engaged in labour migration management. Moreover, concrete activities with assigned budgets should be drawn up in a workplan to address the shortfalls in the management of labour migration.

Lastly, policy development and implementation should be informed by a comprehensive research agenda that ensures a solid evidence base is produced to inform all areas of the National Migration Policy.

### **6.1.3.2 Policies that protect the rights of migrant workers, including bilateral labour agreements and gender-sensitive policies**

#### ***Overview***

The draft National Labour Migration Policy and Strategy for Kenya recognizes the abuse and exploitation of Kenyans working abroad; the exploitative working conditions and limited rights of many migrant workers, especially low-skilled workers; and that women face specific protection challenges. It calls for various interventions to ensure that migrants' rights are protected, including the concluding of BLAs, pre-departure training, and the effective regulation of PEAs.

The 2014 Diaspora Policy also calls for a number of mechanisms to enhance the protection of Kenyan labour migrants, including the development of BLAs; strengthening the regulatory

framework for employment agencies; conducting pre-departure training for migrant workers; and facilitating the registration of Kenyans abroad through Kenya's diplomatic missions.

Kenya has signed BLAs with Qatar and the United Arab Emirates, as well as with Saudi Arabia on the recruitment of Kenyan domestic workers (NCM Secretariat, 2017). These agreements contain a number of provisions to address the vulnerabilities faced by migrant workers. Provisions contained in the BLA with Qatar include:

- ▶ detailed conditions of employment to be specified in recruitment applications;
- ▶ the MOLSP providing migrant workers with information on working conditions and living expenses in Qatar;
- ▶ the repatriation of Kenyan workers by the Government of Qatar on the expiry of their work contracts;
- ▶ the employer paying for the return travel of migrant workers, including their leave travel; and
- ▶ the employment contract to be defined by an individual contract between the worker and employer in accordance with a model contract attached to the agreement.

Moreover, labour attachés have been assigned to Kenyan missions in Qatar, Saudi Arabia, and the United Arab Emirates to enhance the protection of Kenyan migrant workers. In addition, new registration requirements and a code of conduct for PEAs have been issued.

Furthermore, counter-trafficking and Kenya's counter-trafficking law have been included in basic police training curricula (US Department of State, 2017). In 2010 Kenya enacted the Counter-Trafficking in Persons Act and it has a National Plan of Action for Combating Trafficking in Persons in Kenya (2013–2017), which provides for the development of a national referral mechanism to assist trafficked persons. Such a mechanism could potentially provide assistance to migrant workers who are trafficked in Kenya. However, discussions with informants suggest that there is insufficient government support to effectively roll it out.

### ***Assessment***

Kenya has taken a number of measures to enhance the protection of Kenyan migrant workers abroad, including the development of BLAs, deploying labour attachés to Middle Eastern countries, and strengthening the regulation of PEAs. Most efforts are geared towards labour migrants in the Middle East.

It is important to pay adequate attention to the protection challenges faced by Kenyan labour migrants elsewhere, and to reflect this in the National Migration Policy. The protection of irregular migrant workers in Kenya should also be explicitly recognized. The national referral mechanism should be implemented and facilitate assistance to Kenyans trafficked abroad who return to Kenya, and to migrant workers trafficked in or into Kenya.

### 6.1.3.3 Ratification and domestication of international labour migration Conventions

#### *Overview*

In 2017 the Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted that the Kenyan Government has not responded to the information requested regarding the implementation of the ILO Migration for Employment Convention (Revised), 1949 (No. 97) and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) in 2012. It hopes that the next report will contain complete information on the issues raised by the CEACR in 2012, which are outlined immediately below.

Regarding Convention No. 143, the CEACR noted that the Government indicated that a number of recently adopted laws covered migrant workers. The CEACR requested information on whether migrant workers, and which categories of them, are covered by these laws, and how the provisions of these laws give effect to the Convention. The laws in question are: the Employment Act, 2007; the Labour Institutions Act, 2007; the Labour Relations Act, 2007; the Work Injuries Benefits Act, 2007; and the Occupational Safety and Health Act, 2007 (CEACR, 2017a). Discussions with government officials indicate that these laws cover regular migrant workers.

Regarding ILO Convention No. 97, the CEACR requests included information on the functioning of the National Labour Board, the Work Permits Committee, and the Kenya Citizens and Foreign Nationals Management Service, and the policies and measures implemented by the government (CEACR, 2017b).

#### *Assessment*

Kenya has ratified ILO Conventions No. 97 and No. 143. It needs to respond to the information requested by the CEACR in 2012, which includes how laws issued by the Government serve to implement these Conventions.

Kenya has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, and should take steps to ratify this Convention. The draft National Labour Migration Policy and Strategy for Kenya recognizes that the lack of signing such agreements have contributed to the exploitation of Kenyan migrant workers.

## 6.1.4 Thematic Area 4. Regulating recruitment agency practices

### 6.1.4.1 Employment contracts

#### *Overview*

According to the Government, regular migrant workers in Kenya are covered by Kenya's national labour laws and policies, unless specified otherwise. The Employment Act, 2007, contains provisions for written and oral employment contracts. Article 9 under Part II: Employment Relationship, requires that a contract of service that amounts to three months of working days or more, or which requires work that could not be expected to be completed

within three months, should be written. The law requires that the contract state the particulars of employment, including:

- ▶ the description of employment;
- ▶ the place and hours of work;
- ▶ the remuneration and intervals at which remuneration is paid;
- ▶ conditions relating to annual leave;
- ▶ sick pay and leave;
- ▶ pension;
- ▶ the length of notice to terminate employment; and
- ▶ the period of employment (article 10(2)).

In the case of the deployment of Kenyan workers abroad, the following needs to be specified in the contract:

- ▶ the period that the employee is expected to work outside of Kenya, which is required if the employee has to work outside of Kenya for more than one month;
- ▶ the currency the employee will be paid in if working outside of Kenya;
- ▶ any benefits due to deployment abroad; and
- ▶ terms and conditions relating to the employee's return to Kenya.

Moreover, as specified in article 10(7), the onus is on the employer to prove or disprove an alleged term of employment that was unfulfilled in the case of legal proceedings, if an employer fails to produce a written contract.

Part XI on "Foreign Contracts of Service" requires that contracts shall be signed by the parties thereto and attested to by a labour officer. The labour officer shall only attest to it if they are satisfied of the employee's consent to the contract and of the absence of fraud, coercion, and undue influence. Moreover, the terms and conditions of employment should be contained in the contract and comply with the provisions of the Act.

Part XII on "Dispute Settlement Procedure" states that complaints regarding fulfilment of the contract can be lodged by the aggrieved party with the Industrial Court. The Court has since been renamed the Employment and Labour Relations Court.

In order to ensure that workers understand their employment contracts it is stated in article 9(4) that if an employee is illiterate or cannot understand the language that the contract is written in, the employer needs to have the contract explained to the employee in a language that the employee understands.

### ***Assessment***

Kenya is promoting the establishment of written, understandable, and enforceable employment contracts that serve as the basis for determining obligations and responsibilities.



### 6.1.4.2 Licensing and monitoring of private employment agencies

#### Overview

The NEA registers and regulates PEAs; provides information on registered PEAs; and inspects PEAs to ensure compliance (NEA, 2018). The list of registered PEAs, which indicates the duration for which they are licensed, is available on the NEA's website.<sup>6</sup>

The registration system for PEAs is laid out in the Labour Institutions Act, 2007, and the associated Private Employment Agency Regulations, 2016. The Regulations specify in Part II the registration requirements of PEAs, which include:

- ▶ the company has to be registered as a limited liability under the Companies Act and at least one Kenyan has to own shares in it;
- ▶ the directors have attained at least an O-level certificate or the equivalent;
- ▶ it has a minimum share capital of 5 million Kenyan shillings (KES) (US\$48,960)<sup>7</sup>;
- ▶ it is licensed to carry out business within the country of intended operation;
- ▶ it has a registered fully equipped physical office of at least 225 square feet;
- ▶ it has provided a guarantee of KES1.5 million (US\$14,700) with a reputable bank or an insurance agency in Kenya, to be used for repatriation, paying wages, and other entitlements in the event of default by the employer of agent; and
- ▶ the directors should have valid Police Clearance Certificates issued by the Directorate of Criminal Investigations, which have to be renewed every 12 months from the date of issuance.

An application for registration to operate a PEA has to be made in writing to the Director of Employment and include a completed application form; certified copies of academic and professional certificates of the managers and directors of the PEA; and a copy of an operating license from the relevant county authority (article 4). If the requirements are met a registration certificate is issued, which is valid for one year (article 5).

In order to renew the registration certificate an application has to be submitted at least one month before the expiry of the certificate, and be accompanied by a number of documents, including proof that the agency has renewed the bank guarantee.

Article 9(2) indicates how job vacancies will be advertised by these agencies, requiring that such advertising be done either within their premises, in public offices, or through media, and the Director of Employment needs to be notified of all job opportunities and visas for employment.

The COTU-K and FKE participate in a Task Force under the National Labour Board that deals with migration issues. This Task Force has influenced the regulation of PEAs. Their recommendations, which have been implemented by the Government, have included the deregistration of PEAs until they are all vetted, and the deployment of labour attachés to Middle Eastern countries.

<sup>6</sup> See <http://www.nea.go.ke/reports/>.

<sup>7</sup> The exchange rate used for the conversions in this report from KES to US\$ is from <https://www.xe.com/> on 31 October 2018.

The 2016 Code of Conduct for Private Recruitment Agencies was developed through the collaboration of various government agencies and PEAs with a view to establishing a self-regulatory regime. The participants in this process were the:

- ▶ Office of the Attorney General;
- ▶ Directorate of National Intelligence Services;
- ▶ Directorate of Immigration and Registration of Persons;
- ▶ MOFA;
- ▶ Kenya Association of Private Employment Agencies;
- ▶ Domestic Workers Association of Kenya;
- ▶ Kenya Private Recruitment Agencies;
- ▶ Diaspora Welfare Association of Kenya;
- ▶ Global Development Association;
- ▶ Association of Private Recruitment Agencies; and
- ▶ MOLSP (Government of Kenya, 2016, p. iii).

The Code draws on the rules and regulations of other countries, such as the 2002 Revised Rules and Regulations Governing Overseas Employment of Land Based Workers of the Philippine Overseas Employment Administration; and the Ministry of Overseas Indian Affairs Immigration Act and Rules, 1983. It also utilized the codes of ethics of different associations in the recruitment industry in Kenya, including the Association of Private Recruitment Agencies Kenya; the Kenya Association of Employment Agencies; and the Diaspora Welfare Association of Kenya (Government of Kenya, 2016, p. ii).

The Code of Conduct aims to eliminate the maltreatment of Kenyan workers abroad and unfair labour practices, especially in the Middle East. It applies to all PEAs who operate within the jurisdiction of Kenya. The Code specifies that it is to be used together with the:

- ▶ Constitution of Kenya, 2010;
- ▶ 2007 ILO *Guide to private employment agencies, regulation, monitoring, and enforcement*;
- ▶ five labour acts:
  - Labour Institutions Act, 2007;
  - Employment Act, 2007;
  - Labour Relations Act, 2007;
  - Work Injury Benefits Act, 2007; and
  - OSH Act, 2007;
- ▶ ILO Private Employment Agencies Convention, 1997 (No. 181);
- ▶ National Industrial Training Act, 2012; and
- ▶ National Social Security Fund Act, 2013 (Government of Kenya, 2016).

It is assumed that the 2007 ILO *Guide to private employment agencies, regulation, monitoring, and enforcement* and Convention No. 181 (although not yet signed by the Government of Kenya) will serve as reference frameworks to guide the operations of PEAs.

The Code of Conduct contains various provisions to ensure that the rights of Kenyan migrant workers are respected, including the following prescriptions and requirements for PEAs:

- Not accept an order from any client that is discriminatory in any way especially for workers;
- Take measures to ensure that child labour or forced labour is not used or supplied for foreign employment;
- Not engage in activities that are equivalent to human trafficking;
- Take all reasonable steps to provide clients with accurate information about the employer/employee, candidate's qualifications, experience, job descriptions and work place conditions;
- All job descriptions shall be verified;
- Maintain systematic and accurate records of all their recruitment processes;
- Ensure that employees are assigned to work at sites that are safe;
- Ensure that workers receive personal safety training and equipment that may be required;
- Promptly address employee questions, concerns or complaints regarding unsafe work conditions, discrimination or other unfavourable working conditions;
- Refrain from recruiting workers for jobs involving unnecessary/unacceptable risks in which the workers may be subject to dangerous or hazardous work environments;
- Avail to their clients the standard contract provided by the Ministry responsible for Employment matters. The contract shall prescribe obligations of the employer and those of the employee;
- Endeavour to make visits to all work places where they have deployed Kenyan workers to ensure compliance with the terms of the contract.

The Labour Institutions Act, 2007, covers the cancellation of certificates of registration of PEAs, and any changes to the terms of these certificates, as well as penalties. Article 56(7) states that the Director of Employment may cancel the registration of an employment agency or change the conditions of its registration following an inquiry. Article 58 specifies that Employment Officers may search the premises of PEAs, without notice, to prevent, investigate, or detect an offence committed by them, in line with Part VII of the Act on "Employment Agencies". Article 61 explains that a person who contravenes any provision of the Act for which there is no specified penalty, may be fined up to KES50,000 (US\$489.86) or imprisoned for up to three months.

Moreover, the NEA monitors PEAs. They are only registered to operate for one year, after which they need to apply for a renewal, which will not be granted in the case of known unethical practices.

### 6.1.4.3 Pre-departure training

#### *Overview*

The NEA is responsible for ensuring the implementation of pre-departure training, which all migrant workers destined for the Middle East should receive. Discussions with key informants suggest that this is not strictly enforced. A pre-departure training curriculum has been developed by the NEA, National Industrial Training Authority (NITA), the Kenya Institute of Curriculum Development, and the YEDF for domestic workers who are destined for the Middle East. It primarily focuses on domestic work, but also covers cultural practices,

life skills, information related to travel, and the rights and obligations of workers. The NITA will deliver the training with other accredited trainers, while NEA will issue the certificates to those that have completed the training. The training will be funded by the PEAs.

The YEDF has been delivering pre-departure training since 2008 for migrant workers destined for the Middle East, for which it has collaborated with the IOM. They normally train 6,000 youths per year, which is their annual target.

### ***Assessment***

PEAs need to register and operate according to a standardized system that is specified in the law and overseen by NEA. The COTU-K and FKE participate in tripartite consultations, at which the operations of PEAs are discussed and recommendations are made to improve it.

The 2016 Code of Conduct for Private Recruitment Agencies aims to establish a self-regulatory regime among these agencies to ensure the protection of migrant workers' rights. The Labour Institutions Act, 2007, covers the cancellation of certificates of registration of PEAs; changes to the terms of these certificates; as well as penalties. Kenya should accede to ILO Convention No. 181.

#### **6.1.4.4 Recruitment and placement fees**

##### ***Overview***

The 2016 Private Employment Agency Regulations of the Labour Institutions Act, 2007, states in Part II, article 7 that employers will be charged a service fee for the recruitment, documentation and placement of workers. According to article 8, deployment-related costs, such as administrative fees, can also be charged to a migrant worker. Such costs should not exceed one month's salary of the migrant worker, which they will receive once they are deployed.

Article 8 states:

A foreign contract of employment shall specify the party responsible for the payment of the (a) visa fee; (b) airfare; and (c) medical examination.

Provided that reasonable administrative costs may be charged by the agent in respect of trade test, occupational test and the administrative fees shall not exceed the job seeker's proposed one month's salary.

##### ***Assessment***

According to the 2016 Private Employment Agency Regulations, employers will be charged a fee for the recruitment and placement of workers by PEAs. In addition, costs related to deployment can be charged to a migrant worker, such as administrative costs and trade tests. These charges are capped at one month's salary of the migrant worker. To enhance the protection of migrant workers, they should not face any of these charges.

## 6.2 Pillar II. Advancing opportunities for regulated labour migration and decent work

### 6.2.1 Thematic Area 1. Labour mobility schemes to support labour market needs

#### 6.2.1.1 Rules and regulations governing labour migration and mobility

##### *Overview*

The Kenya Citizenship and Immigration Act, 2011, and the Kenya Citizenship and Immigration Regulations, 2012, regulate immigration. Foreigners are encouraged to apply for visas online through the e-visa service.<sup>8</sup> Single-entry visas, transit visas, and courtesy visas can be applied for through this platform. On 28 November 2017 President Uhuru Kenyatta announced that all Africans would be able to receive a visa on arrival in Kenya (*Business Daily*, 2017). According to the DIS, Eritrea, Libya, and Somalia are excluded from this policy. They need to obtain visas prior to arrival in Kenya by applying online or at an embassy.

In May 2018, Kenya and Djibouti enhanced their cooperation through concluding a number of agreements, including one on visa exemption for holders of diplomatic passports (*Capital FM*, 2018). Moreover, since February 2016, Kenya is waiving visa fees for all children aged 16 years and younger that accompany their parents to Kenya (Directorate of Immigration and Registration of Persons, 2016).

The DIS provides information on all the permits and passes that can be obtained for Kenya on its website<sup>9</sup>. The website states that it is in the process of moving all services for foreign nationals online. Work and residence permits are issued to foreign nationals for gainful employment and voluntary service, and each permit is given a letter classification ranging from A to M. The webpage contains explanations and the requirements of all passes and permits.

Article 45(2) of the Kenya Citizenship and Immigration Act, 2011, states that the employer needs to lodge an application for the employment of a foreign national to engage in employment. Work permit class D is issued in the case of specific employment being offered by a specific employer to a person who has skills or qualifications that are not available in Kenya and whose employment is believed to benefit Kenya.<sup>10</sup> The non-refundable processing fee for this work permit is KES10,000 (US\$98). If this work permit is issued in accordance with its objectives, it would serve labour market needs. EAC Partner State citizens are issued work permits free of charge.

Refugees can apply for a class M work permit. This permit is issued free of charge, and is only issued to persons who have been granted refugee status in Kenya and who intend to take up employment or engage in a specific occupation, trade, business, or profession. The requirements to apply for the permit include a valid national passport; a signed application

<sup>8</sup> See <http://evisa.go.ke/evisa.html>.

<sup>9</sup> See <http://www.immigration.go.ke/Information.html>.

<sup>10</sup> For more details, see <https://fns.immigration.go.ke/infopack/permits/>.

form (available online); two signed cover letters from the future employer or applicant, and a recommendation letter from the Department of Refugee Affairs.

The Permit Determination Committee in the MOICNG, which the MOLSP also participates in, and which was established under section 7 of the Kenya Citizens and Foreign Nationals Management Service Act, 2011, decides on the issuance of work permits. However, it is not clear to which extent their decisions are de facto based on established labour market needs. Interviews with key informants suggest that the skills inventory, which could inform such decision making, is rudimentary.

Labour market needs are also addressed in principle by requiring an employer to train a Kenyan citizen for the position that a work permit is granted for. The training should take place for the duration of the work permit. Form 25 of the Kenya Citizenship and Immigration Regulations, 2012 – Application for Issuance or Renewal of Permit – needs to be completed to apply for work permit class D. It requires the employer to specify the steps that are being undertaken to engage a Kenyan trainee, or if a trainee is not engaged, to give reasons for it. However, interviews with government agencies suggest that this system is not thoroughly monitored or followed up on.

Moreover, while Kenya does not have any temporary work schemes<sup>11</sup>, labour mobility is facilitated through the EAC. The Treaty for the establishment of the EAC and the Protocol for the Establishment of the EAC Common Market (CMP) form the legal basis for free movement among the EAC Partner States. Entry provisions are outlined in article 7 of the CMP, which provides for visa-free entry for Partner State citizens. The Free Movement of Persons Annex of the CMP states that citizens should be issued with a pass entitling them to entry and a six-month stay in the host Partner State. Further provisions outline conditions for pass renewal, and prohibit pass holders from undertaking employment, though students can undertake internships or industrial training.

CMP article 10 allows EAC citizens to apply for work and accept offers of employment. Equal treatment between migrant and national workers are provided for, as article 10(2) states that Partner States shall ensure non-discrimination of EAC workers on the basis of nationality in relation to employment, remuneration, and other conditions of work and employment.

The right of establishment is outlined in CMP article 13, under which Partner State citizens are entitled to take up and pursue economic activities as a self-employed person and set up and manage economic undertakings.

It should be noted that the EAC CMP and its implementation imposes limitations on the free movement of labour. The CMP Schedule for the Free Movement of Workers (Annex II), which contains the types of skilled workers that have market access and to which Partner States, largely excludes low-skilled workers, and some argue that it betrays the spirit of articles 76 and 104 of the EAC Treaty, which call for the free movement of workers without qualification (Wasalumbi-Mapanga and Bakunda, 2013, p. 9). Moreover, Partner States have been slow to implement the Schedule, and most categories of professions are yet to enjoy the right to

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<sup>11</sup> Exceptions to this statement include Kenya's BLAs. Kenya has an agreement with Rwanda on the deployment of Kenyan teachers to that country. But it is not clear that teachers are still being deployed to Rwanda under this agreement. As per chapter 3 above, Kenya also has BLAs with Qatar, Saudi Arabia, and the United Arab Emirates for the deployment of low-skilled migrant workers.

move freely to take up employment in neighbouring Partner States (EAEO and EATUC, n.d., p. 4). An assessment of the implementation of the CMP in Kenya highlighted that the denial of work permits and long delays in processing of work permits have inhibited the mobility of EAC workers to Kenya (Ogalo, 2012, p. 7).

In terms of tripartite consultation to address impediments to labour migration, Kenya stands out as an example of good practice in the IGAD region. The FKE and COTU-K participate in tripartite consultation through a number of boards, of which the National Labour Board is the leading mechanism for tripartite consultation. While foreign employers' concerns are at times raised by the FKE during tripartite consultations, the COTU-K generally focuses on the concerns of Kenyan migrant workers going to the Middle East, and not on migrant workers in Kenya. One of the members of the COTU-K is the Kenya Union of Domestic, Hotel, Educational Institutions, Hospitals and Allied Workers ([KUDHEIHA](#)), which, inter alia, focuses on the concerns of domestic Kenyan migrant workers going to the Middle East. [KUDHEIHA](#), with the support of the COTU-K, is advocating for the Government's ratification of the ILO Domestic Workers Convention, 2011 (No. 189) and adoption of the 2015 Domestic Workers Bill, (KUDEIHA, 2018).

Moreover, the FKE and COTU-K promote the interests of workers and employers in the EAC region through their participation in the EAEO and EATUC, and through the engagement of these organizations with EAC bodies, such as the East African Legislative Assembly. One of the EAEO and EATUC's joint initiatives was the production of a *Joint position paper: Removing barriers on free movement of workers in the EAC Region*.

### **Assessment**

Kenya serves as an example of good practice in the IGAD region in supplying easily accessible information on permits and passes and the requirements for the admission, employment, and residence of migrant workers, by making this information available online. Entry visas can be obtained online, and Kenya is in the process of moving all services for foreign nationals online. However, the extent to which work permits are granted on the basis of established labour market needs is not clear.

While Kenya does not have any temporary work schemes, labour mobility is facilitated through the EAC, and non-discrimination is required by the EAC CMP. However, obstacles remain to the movement of workers in the EAC region, and evidence of it serving established labour market needs is lacking.

Administrative procedures involved in the migration process have been simplified by offering many services online. EAC citizens entering Kenya enjoy special privileges and do not pay for work permits. Kenya, Rwanda, and Uganda have all waived work permit fees for EAC citizens, while the other EAC Partner States have not.

According to the Government, Kenya provides regular migrant workers with the same labour rights as nationals. The three major labour laws – namely the Employment Act, 2007; the Labour Institutions Act, 2007; and the Labour Relations Act 2007 – apply equally to Kenyans and regular migrant workers, unless specified otherwise. Undue delays in the issuing of work permits have been reported, but there are no known national laws and administrative

procedures with the principal aim or effect to deny citizens of other IGAD Member States employment that has been offered.

Dialogue and consultation with employers' organizations on practical opportunities and challenges they confront in the employment of foreign workers, as well as with workers' organizations and their concerns regarding labour migration, takes place at the national and EAC level.

### **6.2.1.2 Circular and return migration**

#### ***Overview***

As the EAC CMP provides for the free movement of persons, it can encourage circular and temporary labour migration. Kenya launched the Kenyan East African electronic passport in August 2017, ahead of the 31 December 2018 target agreed by EAC Member States (Wakaya, 2017). The passport can be used internationally, and facilitates the movement of Kenyans through the EAC region and further afield.

Furthermore, the Kenyan diaspora is engaged through mentorship programmes that are overseen by the MOFA. These generally consist of academics in the diaspora partnering with local universities. Health clinics are planned, whereby medical practitioners in the diaspora will engage in health clinics in Kenya on a temporary basis. The Kenya Citizenship and Immigration Act, 2011, allows for dual citizenship in article 8, which can aid circular and return migration. The 2014 Diaspora Policy calls for the development of reintegration mechanisms for returnees, but there is currently no official policy or programme in this area.

#### ***Assessment***

Circular and temporary labour migration is encouraged in the EAC through the implementation of the EAC CMP. Moreover, Kenya allows dual citizenship, which is supportive of circular and return migration, and mentorship programmes aim to engage the diaspora in Kenya.

### **6.2.1.3 Labour exchanges and critical skills**

#### ***Overview***

The 2014 Diaspora Policy recognizes the challenge of brain drain. It calls for the development of a web portal that would capture information on Kenyans in the diaspora who have registered with their respective embassies, including their skills. This is currently under construction and the information will be used to develop mechanisms to engage with the diaspora.

The Public Service Board undertakes needs assessment studies to identify critical skill areas. Workers with critical skills are offered the opportunity to be placed in public institutions upon completion of their studies. The Salary and Remuneration Committee reviews the salaries of public and state officials in order to remunerate them in accordance with international standards, and to prevent the loss of workers with critical skills. These measures, understandably, only apply to the public sector. In spite of these efforts, Kenya continues to experience brain drain in the medical sector due to competitive wages abroad.



## Assessment

Measures to address the loss of workers with critical skills have not been very effective. And there are no labour exchanges with IGAD Member States or other regional economic communities or African countries, apart from labour mobility that takes place through the EAC CMP.

### 6.2.1.4 Establishment and investment

#### Overview

The Government promotes investment in Kenya through KenInvest, which provides information on investment opportunities, incentives, and regulations on its website<sup>12</sup>. KenInvest is mandated under the Investment Promotion Act, 2004, to facilitate passes and permits for foreign investors with projects worth US\$100,000 or more. An investor registered with KenInvest obtains an Investment Certificate upon request and proof of an investment worth US\$100,000 for a foreign investor or KES1 million (US\$9,794) or its equivalent for a local investor. This certificate enables an investor to enjoy the free issuance of additional licenses required for its operations (except for health, security, and environmental certificates) for a maximum period of one year. In addition, for a maximum period of two years, the investor is entitled to:

- ▶ three class D work permits for management or technical staff;
- ▶ three class C permits (issued to individuals who intend to engage in a prescribed profession); and
- ▶ F permits (issued to investors in the manufacturing sector) or G permits (issued to investors who intend to engage in a specific business, trade, or consultancy) for owners, shareholders, or partners (KenInvest, n.d. a).

Single-entry visas can be used for short-term business purposes and to scout for business opportunities. The visa is valid for three months and allows a re-entry to Kenya from the United Republic of Tanzania and Uganda (KenInvest, n.d. b).

The [Kenya Revenue Authority](#) provides tax incentives in collaboration with other authorities, such as the Capital Market Authority and the Export Processing Zones Authority, that differ per sector, and fall under the Income Tax Act. Tax incentives are mainly in the form of capital deductions that are made at the point of computing the gains or profits of a person or company for any year of income (KenInvest, n.d. c).

## Assessment

Kenya offers various incentives for foreign investors, including offering a number of work permits for staff once an Investment Certificate has been obtained. Obstacles to investment and establishment appear limited.

<sup>12</sup> See <http://invest.go.ke>.

## 6.2.2 Thematic Area 2. Supporting functions for participation in the labour market, including access to information, education, training, skills recognition, and finance

### 6.2.2.1 Disseminating information to migrant workers

#### *Overview*

The Solidarity Centre, a US-based global worker rights organization; COTU-K; and KUDEIHA implement a migrant programme that focuses on awareness raising for potential migrants and their families. They are informed of their rights; the operations of PEAs; what constitutes illegitimate recruitment practices, and the dangers of irregular migration to the Middle East.

The FKE has members that are foreign companies, and it disseminates information on Kenyan labour laws and labour issues to these companies, which in turn disseminate some of this information to their foreign employees.

#### *Assessment*

The dissemination of information to migrant workers in Kenya by the Government, workers' organizations, and NGOs needs to be enhanced. Information on the dangers of irregular migration, especially to the Middle East, is disseminated to migrant workers by trade union organizations. But there is no systematic dissemination of information to migrant workers in Kenya on their rights and on opportunities for their social and economic integration in Kenya.

### 6.2.2.2 Education, training, skills recognition, and the harmonization of qualifications

#### *Overview*

There are four bodies that currently recognize particular qualifications and skills in Kenya:

1. The Commission for University Education was established by the University Act, 2012, and is mandated to recognize and equate diplomas, degrees, postgraduate diplomas, and postgraduate certificates awarded by foreign universities and institutions. This should also be done in accordance with the Universities Regulations, 2014, and the Universities Standards and Guidelines, 2014 (Commission for University Education, 2018).
2. The Kenya National Examinations Council, which was established by the Kenya National Examinations Council Act, 1980 (which was repealed in 2012 and replaced with the Kenya National Examinations Council Act No.29 of 2012), is tasked with equating certificates and diplomas issued by other credible examining boards, and therefore performs the role of recognizing basic education (Kenya National Examinations Council, 2016).
3. The Technical and Vocational Education and Training Authority (TVETA), which was established by the Technical and Vocational Education and Training (TVET) Act, 2013, regulates the TVET sector through the licensing, registration, and accreditation of institutions, programmes, and trainers (TVETA, 2016). It also equates certificates related to skills, knowledge, and qualifications.

4. The National Industrial Training Authority (NITA) was established by the Industrial Training (Amendment) Act of 2011, and promotes industrial training. It undertakes trade testing and issues certificate. While the NITA has approved more than 500 institutions across the country as testing centres, only five are being used for testing (NITA, 2018). There is reportedly some overlap between the functions performed by the TVETA and NITA.

Furthermore, the Kenya National Qualifications Framework Act, 2014, established the Kenya National Qualifications Authority (KNQA), which is currently being operationalized. It still has very limited capacities, with only two staff – the acting CEO and the Principal Technical Education Officer. The objectives of the Act include “establish[ing] standards for recognizing qualifications obtained in Kenya and outside Kenya”, and “align[ing] the qualifications obtained in Kenya with the global benchmarks in order to promote national and trans-national mobility of workers” (article 4). As per article 8, the KNQA is, inter alia, tasked with:

co-ordinat[ing] and supervis[ing] the development of policies on national qualifications; develop[ing] a system for assessment of national qualifications; set(ting) standards and benchmarks for qualifications and competencies including skills, knowledge, attitudes and values; and establish[ing] standards for harmonization and recognition of national and foreign qualifications.

According to the KNQA, the current system of the recognition of skills and qualifications in Kenya is uncoordinated. All qualification and skills recognition undertaken by the Commission for University Education, the Kenya National Examinations Council, the TVETA, and NITA should in future fall under the KNQA. The KNQA, in coordination with various stakeholders, has developed the Kenya National Qualifications Framework (KNQF), which covers basic and higher education as well as TVET. The KNQF Regulations are being gazetted, and is not publicly available. In future the KNQA should provide migrant workers with certificates equating their qualifications, which would facilitate their ability to work in Kenya. Some key informants suggested that the new system being rolled out by the KNQA is not functioning well. The certificates being issued by the KNQA are expensive (KES3,000 [US\$29]); need to be obtained for every job or study application (the certificate is issued to the requesting agency and not the individual); and it takes too long to obtain a certificate (three weeks). Consequently, Kenyans are being disadvantaged when they apply for jobs or educational opportunities, as deadlines for applications are reached before certificates are issued.

In addition, in the EAC region, the Inter-University Council for East Africa (IUCEA) coordinates inter-university cooperation, and promotes the maintenance of internationally comparable education standards in the region. It became an EAC body when the East African Legislative Assembly enacted the IUCEA Act, 2009 (IUCEA, 2013).

In the EAC region there are challenges of diverging education systems, especially between the Anglophone and Francophone countries (or previously Francophone, in the case of Rwanda). The IUCEA also works on the harmonization of curricula across the region. According to the KNQA, the IUCEA has developed a Regional Qualifications Framework for Higher Education, but it is not fully implemented.

Moreover, a number of EAC mutual recognition agreements (MRAs) for professional services have been developed, including for accounting, engineering, architectural, and veterinary services (Sawere, 2016). The KNQA and other informants of this study suggested that the

MRAs are not functioning properly, due to lack of trust and the fact that Partner States want to protect their respective labour markets.

### **Assessment**

Kenya is in the process of rolling out the Kenya National Qualifications Authority (KNQA). The KNQA should streamline qualifications and skills recognition, which is currently being undertaken by four different bodies. Migrant workers have access to qualification and skills recognition through these various bodies.

However, the KNQA has very limited capacities, and the system it is launching appears to be slow and ineffective. At the EAC level, MRAs have been developed for certain professions; as has the Regional Qualifications Framework for Higher Education. These systems also do not function optimally. An assessment should be undertaken of what is working and not working in the harmonization and mutual recognition of qualifications in the EAC region, so that lessons can be learnt for the IGAD region and used to develop a sound foundation for the region.

Migrant workers have access to vocational training and educational opportunities and are allowed to join trade unions, but there are no targeted efforts to facilitate their integration into the labour market.

### **6.2.2.3 Facilitating remittances**

#### **Overview**

The Diaspora Policy recognizes the important role that remittances play in the development of Kenya and prioritizes curbing the high cost of remittances. Diaspora remittance is Kenya's highest foreign exchange earner, exceeding earnings from tea, coffee, and tourism (Omondi, 2017). According to the Central Bank of Kenya, remittances in 2017 came to US\$1.95 billion, which is a 13.09 per cent growth on the previous year. Inflows from North America contributed 51.54 per cent, followed by Europe at 32.31 per cent, and the rest of the world contributing 16.14 per cent. This data only captures remittances sent through formal channels, and it has been suggested that the value of remittances could be double this amount if remittances sent through informal channels were factored in. It is estimated that three-quarters of remittances are channelled to family support/consumption, such as school fees and medical bills. The Kenya Diaspora Alliance has argued that this trend could be reversed, with remittances used for investment constituting the majority, if incentives such as tax rebates to invest in Kenya were offered to the diaspora (Munda, 2018).

In 2017 the MOFA's Diaspora and Consular Affairs Directorate – with the support of the African, Caribbean, and Pacific Group of States (ACP)–EU Migration Action, which is implemented by IOM – developed a booklet for the diaspora titled *Send money and invest in Kenya: A guide for diaspora remittances and Investments*.<sup>13</sup> The booklet offers advice on factors that should be considered when choosing a remittance service provider and identifies various providers that could be chosen from. The booklet also outlines remittances price comparison tools,

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<sup>13</sup> The booklet can be found at:  
<http://kenya.iom.int/sites/default/files/Send%20Money%20booklet%20webversion%2020%20June.pdf>.

including the World Bank's Remittances Prices Worldwide website and African Institute for Remittances (AIR) website, "Send Money Africa", which is a regional price comparison tool certified by the World Bank. Send Money Africa provides price comparisons for four remittance corridors to Kenya: Canada, the United Republic of Tanzania, the United Kingdom, and the United States.

The AIR was established as a Specialized Technical Office of the AU to work on strategies to reduce remittance transfer costs to and within Africa, and to improve remittances data statistics and policies. The AIR became operational in 2015 and is hosted by the Government of Kenya. The Government of Kenya is also represented in the AIR's consultative forum, through which it helps to shape its policy direction. The AIR organized a Consultative and Stock-Taking Workshop with African Central Banks, including Kenya's Central Bank, in Harare, Zimbabwe in August 2016. It took stock of AU Member States' legal and regulatory frameworks and remittances data measurement, compilation, and reporting methods, with a view to develop capacity-building measures and programmes (African Union Commission, 2016).

Furthermore, Kenya aims to organize annual diaspora conferences in Kenya, wherein the diaspora is informed of investment opportunities and issues around remittances are also discussed. The last conferences took place in 2015 and 2016. The Fifth Diaspora Development Dialogue took place in Nairobi in July 2016, and was organized by ADEPT (the Africa–Europe Diaspora Development Platform), the MOFA, and AIR. The Dialogue saw the adoption of the Nairobi Action Plan on Remittances, through which participants committed to achieving target 10.7c of the Sustainable Development Goals: "By 2030, reduce to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent."

### ***Assessment***

While Kenya does not offer tax incentives to increase remittances, it has been working to reduce the cost of remittances by facilitating access to financial services through activities with the diaspora. These activities aim to enhance their ability to make an educated choice when choosing a remittance service provider. The Government should implement financial incentives, such as tax rebates, to encourage the use of remittances for investment.

## **6.2.3 Thematic Area 3. Promoting social integration and inclusion**

### **6.2.3.1 Public education and awareness-raising campaigns on the contribution of migrants**

#### ***Overview***

One example of activities aimed at the integration of refugees, is that the UNHCR's Education Unit lobbies for the inclusion of refugee students in mainstream education in Kenya, and for ensuring enrolment, retention, and inclusion of refugee students in numerous learning institutions (UNHCR, 2018d). The IGAD Djibouti Declaration on Regional Refugee Education (2017), signed by the education ministers of IGAD Member States, calls for the integration of

refugees into national education policies and programmes. Consequently, Kenya's Ministry of Education is developing a Refugee Education Inclusion Policy (UNHCR, 2018c). Furthermore, to facilitate integration, the UNHCR also supports host communities. In Kakuma, it reserves 10 per cent of school spaces for children from the host community and supports projects identified by the host community, including education infrastructure (UNHCR, 2018d).

### ***Assessment***

There are no education or public awareness-raising campaigns regarding the contribution that migrant workers are making to Kenya, or known activities to specifically facilitate their integration. There are, however, activities to integrate refugees.

### **6.2.3.2 Family reunification, and access to employment for family members and education for children**

#### ***Overview***

A Dependant Pass is issued to a person whose spouse, parent, or guardian is lawfully entitled to enter Kenya, as per the Kenya Citizenship and Immigration Regulations, 2012. The requirements include:

- ▶ evidence of the relationship between the applicant and the dependant (i.e., duly certified copies of marriage certificate, birth certificate, and death certificate, whichever applicable); and
- ▶ proof of sufficient and assured income to sustain one's self and the dependant (DIS, n.d. a).

The dependant's pass shall become invalid if the dependant engages in employment or other income-generating activity (as per article 28(1)(d) of the 2012 Kenya Citizenship and Immigration Regulations). A Dependant Pass does not entitle the holder to receive an education or training in any establishment within Kenya; to do so a Student Pass needs to be obtained, as per section 30(1) of the Regulations.

In order to apply for a Student Pass or the renewal of a Student Pass, a foreign student should already have been accepted by a government-approved educational or training institute in Kenya.

Other requirements for a new Student Pass and its renewal include:

- ▶ a completed, signed, and stamped application form by the educational/training institute's authorized staff;
- ▶ a signed cover letter from the institute addressed to the DIS Director, and detailing the course to be pursued and its duration;
- ▶ proof of funds for self-sponsored students; and
- ▶ current immigration status of the pupil/student (DIS, n.d. b).

EAC citizens are exempted from paying for the Student Pass.

## Assessment

In order for a worker to be accompanied by their spouse or child, the dependant needs to obtain a Dependant's Pass. This pass does not allow the pass holder to engage in any form of trade or economic activity, for gain or otherwise. Moreover, the education system can only be accessed by migrant workers' children once they have obtained a Student Pass, which is free of charge for EAC citizens.

## 6.3 Pillar III. Enhancing the protection of migrant workers and their families

### 6.3.1 Thematic Area 1. Protection of migrant workers' human rights

#### 6.3.1.1 Protecting the rights of migrants

##### Overview

Human rights are enshrined in Kenya's Constitution, which in principle applies to all people in Kenya, including migrant workers. The Constitution establishes in Part 5 the Kenya National Commission on Human Rights (KNCHR).

Its functions include:

- to monitor, investigate and report on the observance of human rights in all spheres of life in the Republic, including observance by the national security organs; (article 59(2)(d))

- to act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights; (article 59(2)(g))

- Every person has the right to complain to the Commission, alleging that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened (article 59(3)).

The KNCHR is also responsible for the enforcement of migrants' rights. The Better Migration Management Programme, which is led by GIZ, developed a curriculum on the enforcement of migrants' human rights for and with the KNCHR in 2017. The Programme trained 20 KNCHR staff on the curriculum on 10–12 October 2017, and reports that it resulted in much greater awareness regarding the enforcement of migrants' human rights within the KNCHR. In addition, the Better Migration Management Programme conducted a planning workshop with KNCHR staff in January 2018 to identify their role and mandate in the protection of migrants' rights. The outcomes of the planning workshop served to define further activities, which started in 2018 and focus on protecting the rights of migrants in detention.

Migrant workers travelling to the Middle East may receive pre-departure training and be informed of their human and labour rights, as well as the channels that are available to them to defend their rights. For migrant workers in Kenya, there is no mechanism in place to systematically inform them of their rights. The Employment Act, 2007, which applies to regular migrant workers in Kenya, requires employers to inform employees of their rights (article 15). The extent to which this requirement is implemented or enforced is unclear.

The Employment and Labour Relations Court was established under article 162(2)(a) of the Constitution, and is responsible for settling employment and industrial relations disputes and promoting good employment and labour relations in Kenya. It has the status of a High Court, and exercises its jurisdiction throughout Kenya. Regular migrant workers can appeal to the court to settle a dispute with their employer (Judiciary of Kenya, 2018).

### ***Assessment***

In principle national laws on human rights apply to migrant workers, and the Kenya National Human Rights and Equality Commission is responsible for monitoring, investigating, and enforcing human rights. The Commission has received training on enforcing the rights of migrants. In addition, regular labour migrants have access to the Employment and Labour Relations Court to settle employment disputes.

A systematic approach or mechanism to inform migrant workers in Kenya of their rights is lacking. The extent to which the rights of migrant workers is enforced is also unclear. Moreover, protection mechanisms are geared towards regular labour migrants, with no notable mechanisms to protect migrant workers in an irregular situation in Kenya.

Kenyan migrant workers in distress can contact their embassies and labour attachés for assistance. Kenyan domestic migrant workers can also appeal to the COTU-K for assistance, who will contact the relevant domestic workers union and the Government of Kenya. The Government of Kenya follows up on such cases through its embassies and labour attachés.

### **6.3.1.2 Protecting migrants from forced labour and exploitation**

#### ***Overview***

The Employment Act, 2007, prohibits forced labour in article 4. Moreover, Kenya is party to the United Nations Convention Against Transnational Organized Crimes (UNTOC) and has ratified the United Nations Protocol Against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children ("UNTOC TIP Protocol"). Kenya enacted the Counter-Trafficking in Persons Act in 2010, to meet its obligations under the UNTOC TIP Protocol, and revised it in 2012 (IOM, 2015, p. 128). The Act meets the specifications of the UNTOC TIP Protocol, and inter alia, prohibits forced labour and exploitation.

The Counter-Trafficking in Persons Act establishes in article 19 the Counter-Trafficking in Persons Advisory Committee, which consists of:

- ▶ the permanent secretaries of the ministries responsible for:
  - immigration;
  - foreign affairs;
  - gender and children;
  - labour;
- ▶ the Attorney General;
- ▶ the Commissioner of Police;
- ▶ a representative of the KNCHR;



- ▶ two representatives from civil society;
- ▶ one representative from the COTU-K; and
- ▶ one representative from the FKE.

The Counter-Trafficking in Persons Advisory Committee developed the National Referral Mechanism Guidelines to assist trafficked persons. The Guidelines aim to promote cooperation between all government agencies and organizations involved in working with trafficked persons, and to shape a holistic system of support for them, consisting of identification, referral, and reintegration based on the individual needs of victims (State Department for Social Protection, 2017). Discussions with informants suggest that there have been challenges with rolling out the national referral mechanism. Moreover, Kenya has a National Action Plan for Combating Human Trafficking 2013–2017, but its implementation has reportedly faced budgetary challenges.

The Victim Protection Act, 2014, aims to further enhance “the protection of victims of crime and abuse of power, and to provide them with better information and support services to provide for reparation and compensation to victims; to provide special protection for vulnerable victims, and for connected purposes” (Victim Protection Act, preamble). Victims of trafficking may benefit from support under this Act. The Act establishes a Victim Protection Trust Fund, which can provide assistance to victims.

The US Department of State *Trafficking in Persons Report 2017* recognizes that the Government of Kenya is making significant efforts to eliminate trafficking, which includes new registration requirements and the Code of Conduct for PEAs, and assigning labour attachés to Kenyan missions in Qatar, Saudi Arabia, and the United Arab Emirates to protect citizens employed in those countries. The report also, however, criticizes the Government for not allocating new funding to the victim assistance fund; authorities treating some victims as criminals; and the limited protection services for adult victims.

### **Assessment**

Kenya has adopted legislation and policies to prohibit and address exploitation, forced labour, and human trafficking, and to assist victims. Implementation of these instruments requires strengthening, including by increasing assistance for adult victims and implementing the national referral mechanism.

## **6.3.2 Thematic Area 2. Social security and social protection**

### **6.3.2.1 National labour laws and social protection laws apply to migrant workers**

#### **Overview**

According to the Government, regular migrant workers are covered by the Employment Act, 2007. Domestic workers are also covered by the Act (Babu, 2015). The Employment Act contains various provisions to offer protection to workers, including the protection of wages, minimum conditions of employment, and maternity leave (three months leave with full pay for female employees and two weeks with full pay for male employees, per article 29(1) and

29(8)). The OSH Act, 2007, aims to ensure the safety, health, and welfare of workers and all persons lawfully present at workplaces. It also applies to regular migrant workers.

### ***Assessment***

According to the Government, regular labour migrants in Kenya enjoy the same protections as Kenyan workers under national labour law. However, it is not clear to what extent this protection is enforced, and irregular migrant workers do not benefit from protection measures.

## **6.3.2.2 Social security coverage and portability**

### ***Overview***

Kenya's National Social Security Fund Act, 2013, established the National Social Security Fund, and states in article 19(1) that "every employer who, under a contract of service, employs one employee or more shall register with the Fund as a contributing employer and shall, register his employee or employees, as members of the Fund". Regular migrant workers should therefore also participate in the Fund. The Act also allows for voluntary registration by self-employed persons, and by extension applies to migrants who are self-employed in Kenya and in a regular status.

The 2014 National Diaspora Policy recognizes that Kenyans abroad contribute to social security services in their countries of residence, and that there are no bilateral agreements or formal framework in place to facilitate transferability and portability of social security benefits to Kenya. It calls for the development of a framework to facilitate the transferability and portability of social security benefits, and bilateral instruments to facilitate the transfer of social security benefits. These instruments are yet to be developed (NCM, 2017).

At present, the portability of social security is still not possible among EAC Partner States. A draft Social Security Portability Bill, which would ensure that social security benefits earned in the public and private sector are portable, was first presented to the East African Legislative Assembly through the Committee of the General Purpose at EAC Headquarters in Arusha, the United Republic of Tanzania, in May 2015. The bill is yet to be adopted. On 23–24 March 2018, the EATUC and EAEO, with support from the Solidarity Centre, organized a workshop to review the progress of the Bill. Participants included the East African Civil Society Forum, the East Africa Local Government Association, the East African Health Platform, and the East African Legislative Assembly (EATUC, 2018). Moreover, the EAC and the ILO signed a memorandum of understanding (MOU) on 10 May 2018, which is a follow up to an MOU signed in 2001. The revised MOU enables the ILO to support the EAC with the development of a framework for the harmonization of EAC Partner States' policies on social security in line with the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) (EAC, 2018).

## ***Assessment***

According to the Government, regular migrant workers in Kenya have access to the National Social Security Fund, as do self-employed migrants who have a regular status. However, Kenya has no bilateral, regional, or multilateral agreements in place to facilitate the transferability and portability of social security benefits. To date, the portability of social security is still not possible among EAC Partner States, though a draft Social Security Portability Bill to make it possible has been under discussion since 2015.

### **6.3.3 Thematic Area 3. Labour inspection for migrant workplaces**

#### ***Overview***

Regular migrant workers fall under national labour law, and labour inspection should apply equally to their workplaces. General labour inspections are undertaken by the Department for Labour and are governed by the Labour Institutions Act, 2007 (as revised in 2013). Labour officers carry out inspections of workplaces and/or places where employees are residing (be they permanent or temporary) to ensure that they conform to national labour law (article 35(e)). The National Labour Board, which is established by the Act, should advise the MOLSP on systems of labour inspection, and includes representatives of trade unions and employers' organizations.

Occupational safety and health (OSH) inspections are governed by the OSH Act, 2007, which applies to all workplaces. The Directorate of Occupational Safety and Health Services, which falls under the MOLSP, is responsible for enforcing the Act and carries out safety and health inspections.

The two inspection systems operate independently and challenges of coordination and collaboration have been reported. There are also other inspection bodies in different sectors, such as oil, agriculture, fishing, mining, industry, transport, education, health, and finance (ILO, n.d).

#### ***Assessment***

According to the Government, regular migrant workers are covered by national labour law, which provides for labour inspection. The inspection of workplaces is carried out by the Labour Department, the Directorate of Occupational Safety and Health Services, and sector-specific bodies. Coordination challenges between these bodies with regards to labour inspection have been pointed out by the ILO (n.d). An additional assessment is required to determine to what extent migrants' workplaces are de facto investigated, and whether the responsible authorities have the necessary resources, including adequately trained labour inspection staff.

## 6.3.4 Thematic Area 4. Facilitating reception and return

### Overview

Migrant workers destined for the Middle East should receive pre-departure training, but it is not strictly enforced. The YEDF has delivered two workshops on reintegration for youths who returned to Kenya and who had previously received YEDF pre-departure training. The last reintegration workshop took place in 2013 and focused on counselling and financial management. These workshops seem to have been discontinued.

The Diaspora Policy calls for the development of reintegration mechanisms for returnees, which includes “programmes to absorb returnees; debriefing and counselling of returnees; and help desks in government institutions and other agencies that interact with Kenyans abroad”. The draft 2017 National Labour Migration Policy and Strategy also calls for the development of reintegration measures for returnees, including skills recognition, training support and awareness raising on investment opportunities. A comprehensive reintegration strategy or programme is yet to be developed.

Reintegration-related activities are carried out by different NGOs and IOs, while the Government has provided some trauma counselling in the past. Furthermore, the YEDF provides different types of loans to groups and individuals – including to returnees – on the basis of a business plan, so the recipients can start businesses. The loans generally range between KES50,000–KES5 million (US\$490–US\$48,960) and have an interest rate of 5–6 per cent.<sup>14</sup> The YEDF also offers mentorship, financial training, business counselling, and business clinics for groups.

Reintegration support is provided to trafficked persons by NGOs, such as Awareness Against Human Trafficking, which aims to provide holistic, individualized support to trafficked persons. Moreover, the IOM runs an Assisted Voluntary Return and Reintegration (AVRR) programme from its Kenya office, which offers voluntary return and reintegration support to migrants in Kenya or abroad who are unable or unwilling to stay in their host countries. AVRR assistance generally covers counselling, medical assistance, and travel arrangements (including travel documentation) during the pre-departure stage. During the transportation stage, returnees, inter alia, benefit from departure assistance and allowances; travel assistance and pre-embarkation medical checks; and medical and travel escorts. The post-arrival stage includes reception, inland transportation, health-related support, and small reintegration grants, as well as monitoring and follow up (IOM, 2016). AVRR to Kenya started in 2002 and most returnees are from Europe (IOM, 2015, p. 67).

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<sup>14</sup> More information on the loans can be found at: <http://www.youthfund.go.ke/loans/>.

### ***Assessment***

Migrant workers arriving in Kenya do not receive on-arrival training and information from the Government. They may receive training and information from their employer. Kenyan labour migrants who migrate regularly through PEAs should receive pre-departure training, though it appears not to be strictly enforced.

Kenya does not have a return and reintegration policy or strategy. There is a need to develop a clear policy framework for reintegration that will facilitate coordination among different services providers; identify gaps that need to be addressed; and take steps to remedy these gaps. Alternatively, a comprehensive approach to return and reintegration could also be anchored in the draft Migration Policy.

## 7. Recommendations

### Pillar I. Strengthening labour migration governance

#### Thematic Area 1. Capacity to collect and analyse labour migration data

- ▶ The Government of Kenya should strengthen systematic data analyses and sharing of data among government agencies, with a view to applying it to labour migration policy development and implementation. The National Migration Policy should capture these data management objectives and detail concrete steps to achieve them, including by:
  - assigning roles and responsibilities to the government agencies that contribute to data collection, management, and analysis;
  - outlining the necessary coordination mechanisms among them; and
  - identifying capacity-building activities with assigned budgets and timelines for these government agencies to fulfil these roles.

Once the Policy is finalized and adopted, it can be used as a basis for fundraising to undertake the necessary capacity building.

- ▶ The Government should bolster the KLMIS by capturing sectorial, occupational, and regional labour shortages.
- ▶ The Government should use the KLMIS as an evidence base for developing strategies to address skills shortages, such as targeted skills development and attracting migrant workers to certain sectors. In such strategies the long-term impact of demographic trends should be taken into account, as well as labour demand in other countries.
- ▶ Kenya and the other IGAD Member States should put in place routine sharing of data and analysis on labour supply and demand and skills shortages between the IGAD Member States, with a view to identify opportunities to enhance labour migration and fill skills gaps.

#### Thematic Area 2. Coordination on labour migration

- ▶ The NCM Secretariat should bolster consultations on international labour migration beyond labour migration to the Middle East and Gulf countries, and include social partners as members of the NCM.

Consultations should give sufficient attention to:

- the protection of Kenyan migrant workers in labour migration flows to all countries and regions of destination;
  - migration and development;
  - return and reintegration;
  - the protection of migrant workers in Kenya;
  - addressing brain drain; and
  - identifying critical skills and attracting migrant labour to those sectors in Kenya.
- ▶ The NCM should be funded by the national budget to ensure sustainability.

- ▶ The NCM should be devolved to operate at the county level, to ensure country-wide engagement.
- ▶ The IGAD Secretariat and IGAD Member States should establish tripartite consultation at the IGAD level. The Horn of Africa Confederation of Trade Unions should establish a partnership with IGAD. A regional employers' organization should also be formed and establish a partnership with IGAD, and IGAD should develop a framework for tripartite consultation.
- ▶ Tripartite consultation at the IGAD level through regional workers' and employers' organizations could highlight impediments to the free movement of persons in the IGAD region and contribute to devising workable solutions.
- ▶ The relevant regional economic communities and the AU should institute the sharing of labour market information and profiles of good practices on labour migration in existing forums, such as the IGAD Regional Consultative Process, the COMESA Regional Consultative Process, EAC meetings, AU meetings, and meetings of the Joint Labour Migration Programme.

### Thematic Area 3. Capacity to formulate and implement policy

- ▶ The Government should clearly indicate in the draft National Migration Policy how policy coherence will be achieved between labour migration policy objectives and other policy areas, such as employment, education, health, trade, and economic development and integration.

The Government should outline in Kenya's Medium Term Plan 2018–2022 and successive Medium Term Plans how policy coherence and synergies between labour migration policy objectives and other national policies and issue areas will be achieved. This should include effective monitoring and continued coordination among the relevant government agencies to achieve policy coherence while implementing strategies and activities. The NCM could serve as an important mechanism to facilitate policy coherence.

- ▶ The National Migration Policy should reflect the protection challenges faced by Kenyan labour migrants in labour migration flows to the Middle East and other key corridors, and how these problems can be addressed.
- ▶ A research agenda and related costed and funded workplan to support implementation of the National Migration Policy should be developed.
- ▶ Capacity-building activities with assigned budgets and timelines should be drawn up in a workplan to address the shortfalls in the management of labour migration and to support the implementation of the labour migration aspects of the National Migration Policy.
- ▶ The Government should sign, ratify, and domesticate the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- ▶ The Government should report to the CEACR on the information requested in 2012 regarding the implementation of ILO Conventions No. 97 and No. 143.

## Thematic Area 4. Regulating recruitment agency practices

- ▶ The Government should ratify the ILO Private Employment Agencies Convention, 1997 (No. 181).
- ▶ The Government should abolish the charging of fees by PEAs to migrant workers, in line with the ILO *Guiding principles and operational guidelines on fair recruitment* (2016).

## **Pillar II. Advancing opportunities for regulated labour migration and decent work**

### Thematic Area 1. Labour mobility schemes to support labour market needs

- ▶ The Government should properly implement the CMP so that EAC citizens can enjoy the labour market access offered under the EAC CMP.
- ▶ The Government should identify labour market needs and fill skill gaps by attracting migrant workers and facilitating immigration procedures. This should also include opening up more work categories to the citizens of EAC Partner States; attracting migrant workers from IGAD Member States; and enhancing cooperation with the Kenyan diaspora.
- ▶ The Government should develop effective measures to address and prevent the loss of critical skills, including through tripartite consultation.

### Thematic Area 2. Supporting functions for participation in the labour market, including access to information, training, and finance

- ▶ The Government should institute the systematic dissemination of information to migrant workers in Kenya on their rights, avenues for redress in case of violation of their rights, and opportunities for their social and economic integration. In this regard, outreach programmes or mechanisms at the county level should be developed to ensure that migrant workers across Kenya receive the necessary information.
- ▶ The Government should enhance the dissemination of information on rights and protection mechanisms to Kenyan migrant workers destined for the Middle East and other key corridors, including by engaging workers' organizations and NGOs.
- ▶ The IGAD Secretariat should undertake an assessment to determine what is working and not working in the harmonization and mutual recognition of qualifications in the EAC region; so that lessons can be learned for the IGAD region and be used to develop a sound foundation for the region.
- ▶ The Government should implement financial incentives, such as tax rebates, to encourage the use of remittances for investment.

### Thematic Area 3. Promoting social integration and inclusion

- ▶ The Government should study the contributions that migrant workers make to Kenya, as well as the integration challenges they face, and develop public awareness-raising activities on their contributions to support their integration into Kenyan society.



## **Pillar III. Enhancing the protection of migrant workers and their families**

### **Thematic Area 1. Protection of migrant workers' human rights**

- ▶ The Government should actively inform migrant workers in Kenya of their rights, and ensure that migrant workers in an irregular situation have access to protection mechanisms.
- ▶ The Government, IOs, NGOs, and other partners should increase assistance for victims of trafficking and exploitation, and bolster the national referral mechanism by strengthening its capacities and expanding its coverage to all regions of Kenya.

### **Thematic Area 2. Social security and social protection**

- ▶ The Government should conclude bilateral and multilateral agreements to ensure the portability of social security benefits of both Kenyan migrant workers and migrant workers in Kenya, including through finalizing the draft Social Security Portability Bill of the EAC CMP.

### **Thematic Area 3. Labour inspection for migrant workplaces**

- ▶ The Government should regularly train labour officers and ensure that migrants' workplaces are regularly inspected.

### **Thematic Area 4. Facilitating reception and return**

- ▶ The Government should provide migrant workers in Kenya with on-arrival information or training on their rights and obligations, such as access to social services, finance, education, dispute settlement mechanisms, and tax contributions.
- ▶ The Government should develop a clear policy framework for return and reintegration that facilitates coordination between different services providers, and identifies gaps that need to be addressed and the steps to be taken in this regard.

## Appendix I. List of key informants<sup>15</sup>

### Central Organization of Trade Unions (Kenya)

Damaris Muhika, Project Coordinator

Noah Chune, Economist

### Deutsche Gesellschaft für Internationale Zusammenarbeit

Silke Hampson, Better Migration Management Project, Regional Coordinator Kenya/Somalia

Fridah Kibuko, Better Migration Management Project, Programme Officer Kenya/Somalia

Janet Ondieki, Better Migration Management Project, Project Officer Kenya/Somalia

### EU Delegation

Hanina Ben Bernou, Governance Advisor, EU Emergency Trust Fund

### Federation of Kenyan Employers

Isaac Kiema, Projects and Capacity Building Coordinator

### Intergovernmental Authority on Development

Charles Obila, Migration Officer

### International Organization for Migration

Jo Rispoli, Senior Labour Migration Specialist

### Ministry of Education

Nelson Gitau, Principal Technical Education Officer, Directorate of TVET

### Ministry of Foreign Affairs and International Trade

Washington Oloo, Director Diaspora and Consular Affairs

### Ministry of Interior and Coordination of National Government

Dan Opon, Assistant Director of Immigration Services, National Coordination Mechanism of Migration Secretariat, Department of Immigration Services

Patricia Nduta Gituanja, Chief Immigration Officer, National Coordination Mechanism of Migration Secretariat, Department of Immigration Services

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<sup>15</sup> The names of the ministries in this annex are the names they had at the time that the interviews took place. Subsequently some of their names have been changed by the Government of Kenya.

## **Ministry of EAC, Labour and Social Protection**

Isaiah Kirigua, Acting Labour Commissioner

Mary Kezzah, Assistant Labour Commissioner

Ndongi Titus, Assistant Director Regional Integration, Department of East African Community Integration

## **Ministry of Finance and National Treasury**

Sabina Maghanga, Director of Planning

## **National Council for Population and Development**

Peter Arisi Nyakwara, Director Technical Services

Lucy Kimondo, Assistant Director of Population

## **National Employment Authority**

Festus Mutuse, Assistant Director

## **National Qualifications Authority**

Johnson Nanjakululu Owaninambirifuma, CEO

Ephraim Munene Njeru, Principal Technical Education Officer

## **Regional Mixed Migration Secretariat**

Danielle Botti, Coordinator

## **Samuel Hall**

Rebecca Frischkorn, Project Manager

Benjamin Hounsell, Implementation Research Pillar Lead

## **United Nations Office on Drugs and Crime**

Maria Temesvari, Crime Prevention and Criminal Justice Officer, Transnational Organized Crime, Illicit Trafficking and Terrorism Programmes, Regional Office for Eastern Africa

## **Youth Enterprise Development Fund**

Morris Ondiek, Acting Senior Enterprise Development Officer, Enterprise Development Unit

Dahabo Atikiya, Labour Export Officer, Youth Employment Scheme Abroad Unit

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Free Movement of Persons and Transhumance  
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