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REPUBLIC OF KENYA



THE SENATE

THIRTEENTH PARLIAMENT | FOURTH SESSION

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

PAPERS LAID	
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COMMITTEE	Labour.
CLERK AT THE TABLE	Lifany

REPORT ON THE LABOUR MIGRATION AND MANAGEMENT

(NO.2) BILL, 2024

(SENATE BILL NO. 42 OF 2024)

Rt. Hon. Speaker
You may approve for tabling
J. M. Nyegenye, C.B.S.,
Clerk of the senate/secretary, PSC
Date: 10/07/25

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI

JUNE, 2025



TABLE OF CONTENTS

PRELIMINARIES.....	4
Establishment and Mandate of the Committee.....	4
Membership of the Committee.....	5
FOREWORD BY THE CHAIRPERSON	6
CHAPTER ONE: INTRODUCTION	8
1.0 Situational Analysis of Labour Migration and Management in Kenya	8
1.1 The Journey Towards the Legal Framework: The Labour Migration and Labour Migration Management Bill, 2024	11
1.2 Overview of Labour Migration and Management Bill 2024.....	14
1.3 Key Provisions of the Labour Migration and Management Bill 2024.....	14
CHAPTER TWO: OVERVIEW OF PUBLIC PARTICIPATION ON THE BILL	21
2.0 Committee Undertakings	21
2.1 Public Hearing on the Labour Migration and Management Bill, 2024.....	21
2.2 Emerging Concerns from the Stakeholder Submissions on the Labour Migration and Management Bill, 2024	23
2.2.1 The long title of the Bill vis-à-vis the focus or gap the Bill seeks to address	23
2.2.2 The clarity in the definition of 'Agencies.'	23
2.2.3 The Ultra Vires Consequence of Specific Provisions of the Bill	23
2.2.4 Application of the Bill	24
2.2.5 Introduction of Diaspora Placement Agency.....	24
2.2.6 Labour and Diaspora Attaches	25
2.2.7 Conflict of Laws	25
2.2.8 The Composition of the Inter-ministerial Committee	25
2.2.9 Conditionalities for registration of private employment agencies and other requirements of the Agencies.....	26
2.2.10 Registration of migrant workers	26
2.2.11 Migrant Welfare Fund	27
2.2.12 Bilateral Labour Agreement	27

2.2.13	<i>Omitted policy areas that need inclusion in the Bill</i>	28
CHAPTER THREE: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS.....		29
3.0	Committee Observations	29
3.1	Committee Recommendations	30
APPENDICES		32

LIST OF ABBREVIATIONS/ACRONYMS

ASMAK	- Association of Skilled Migrant Agencies of Kenya
BLAs	- Bilateral Labour Agreements
CS	- Cabinet Secretary
DPA	- Diaspora Placement Agencies
HRM	- Human Resource Management
KNCCI	- Kenya National Chamber of Commerce and Industry
KSA	- Kingdom of Saudi Arabia
NEA	- National Employment Authority
NGEC	- National Gender and Equality Commission
NGOs	- Non-Government Organizations
PEA	- Private Employment Agencies
PRA	- Private Recruitment Agencies
UN	- United Nations

PRELIMINARIES

Establishment and Mandate of the Committee

The Standing Committee on Labour and Social Welfare is established pursuant to standing order 228 of the Senate Standing Orders. The Committee is mandated to consider all matters related to manpower and human resources planning, pensions, gender, culture, social welfare, youth affairs, the National Youth Service, children's welfare, national heritage, betting, lotteries, sports, public entertainment, public amenities, and recreation.

The Committee oversees four Ministries as follows –

1. The Ministry of Labour and Social Protection;
 - a) State Department for Labour and Skills Development; and
 - b) State Department for Social Protection and Senior Citizens Affairs.
2. The Ministry of Public Service, Human Capital Development and Special Programs;
 - a) State Department for Public Service and Human Capital Development; and
 - b) State Department for Special Programs.
3. The Ministry of Youth Affairs, Creative Economy and Sports;
 - a) State Department for Youth Affairs and Creative Economy; and
 - b) State Department for Sports.
4. The Ministry of Gender, Culture and Children Services;
 - a) State Department for Gender Affairs and Affirmative Action;
 - b) State Department for Culture, the Arts and Heritage; and
 - c) State Department for Children Services.

The Committee also oversees the following institutions under the State Department for Public Investments and Assets Management in the National Treasury -

- a) The Retirement Benefits Authority;

- b) The Local Authorities Provident Fund;
- c) Public Service Superannuation Scheme; and
- d) The Civil Servants Accident Claim Fund.

The Committee also oversees the following Commissions and State Corporations –

- a) The Public Service Commission;
- b) The Salaries and Remuneration Commission;
- c) National Gender & Equality Commission;
- d) The Commissioner of Sports & Sports Registrar; and
- e) Permanent Presidential Music Commission.

Membership of the Committee

The Committee membership is as follows –

- 1. Sen. Julius Recha Murgor, CBS, MP - Chairperson**
- 2. Sen. Crystal Kegehi Asige, MP - Vice Chairperson**
3. Sen. (Rtd.) Justice Stewart Madzayo, EGH, MP - Member
4. Sen. Erick Okong'o Mogeni, SC, CBS, MP - Member
5. Sen. Alexander Munyi Mundigi, MP - Member
6. Sen. Lenku Seki Ole Kanar, MP - Member
7. Sen. Miraj Abdullahi Abdulrahman, MP - Member
8. Sen. Beth Syengo MP - Member

FOREWORD BY THE CHAIRPERSON

The Labour Migration and Management (No.2) Bill (Senate Bills No. 42 of 2024) is sponsored by Senator Mutinda Maureen Tabitha, MP. The Bill was read a First Time in the Senate on 18th September, 2024 and referred to the Standing Committee on Labour and Social Welfare to facilitate public participation.

Hon. Speaker,

Pursuant to Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committee published an advertisement in the Daily Nation and Star Newspapers on 24th September, 2024, inviting members of the public to submit written memoranda to the Committee on the Bill. The advertisement was also posted on the Parliament website and social media platforms.

Following the call for submissions, the Committee received written memoranda from stakeholders. The Committee held a public hearing session with targeted stakeholders and members of the Public on 24th October, 2024. The stakeholders included; Ministry of Labour and Social Protection; State Department of Diaspora Affairs; National Employment Authority (NEA); Kenya National Chamber of Commerce and Industry (KNCCI), and Association of Skilled Migrant Agencies of Kenya (ASMAK), and the National Intelligence Service.

The Committee proceeded to consider the Bill extensively and observed that the Bill seeks to address the challenges faced by migrant workers both before, during and in the countries of destination. The challenges include inadequate coordination, weak regulation of recruitment agencies, violation of the fundamental rights of migrant workers, and lack of accurate, up-to-date and reliable data and information on labor migration and migrant workers.

The Minutes of the Committee in considering the Labour Migration and Management (No.2) Bill (Senate Bills No. 42 of 2024) are annexed to this Report as **Appendix 2**. This Report by the Committee is therefore an account of the deliberations, including its recommendations attached to the Report as **Appendix 1**.

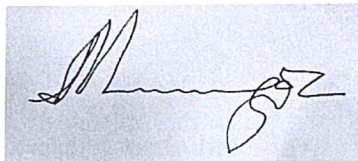
Hon. Speaker,

May I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which made the consideration of the Bill successful. I also wish to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this assignment.

Hon. Speaker,

It is now my pleasant duty, pursuant to standing order 148(1) of the Senate Standing Orders, to present the Report of the Standing Committee on Labour and Social Welfare on the Labour Migration and Management (No.2) Bill (Senate Bills No. 42 of 2024).

Signed:



Date: Friday, 20th June, 2025

SEN. JULIUS RECHA MURGOR, CBS, MP

**CHAIRPERSON, STANDING COMMITTEE ON LABOUR AND SOCIAL
WELFARE**

CHAPTER ONE: INTRODUCTION

1.0 Situational Analysis of Labour Migration and Management in Kenya

1. Chapter one gives context to the Bill by providing detailed highlights of the state of labor migration in the country. Furthermore, the section outlines the milestones leading to the proposed Labour Migration and Management Bill, 2024.
2. Global labour migration is not a new phenomenon, but remains a pivotal contributor to the increasing global labour market driven by high unemployment rates in Kenya¹. According to the Ministry of Labour, Kenyans migrate to different parts of the World, including Europe, the United States of America (USA), Asia, and Latin America. Other common destinations include Canada, Australia, the Middle East and the Gulf region and selected countries in Africa such as Uganda, Tanzania, South Sudan, Rwanda, Botswana, Lesotho and South Africa. This trend is attributed to increased human mobility, rapid globalization and open borders, technological advancement and demographic challenges.
3. However, the Arab states are emerging as crucial labor destinations. The Middle East, particularly the Kingdom of Saudi Arabia (KSA), Qatar, and Dubai, remains a critical labor destination for Kenyans. The Ministry of Labour reported facilitating at least 87,784 Kenyans to the Middle East between January, 2019 and July 2021.².
4. Labour migration is viewed positively, given its contribution to the socio-economic well-being of families while enabling the transfer of technology and skills. Its downside, however, remains a policy issue.
5. Evidence indicates that low-skilled migrant workers remain vulnerable to abuse, receive inadequate wages, endure poor working conditions, and occasionally face instances of discrimination. Further, reports highlight an increase in the number of Kenyans seeking domestic assignments in the Middle East, alongside a corresponding rise in distress calls.

¹ <https://www.ilo.org/resource/news/international-migrants-are-vital-force-global-labour-market> retrieved 29 October 2024

² CS Ministry of Labour, Mr. Chelugui, while appearing before the National Assembly Labour and Social Welfare Committee in July 2021.

6. In September, 2014, an attempt was made to address the challenges facing migrant domestic workers through the government's ban on the export of Labour and further set up a task force to review the management of foreign employment. However, with the lifting of the ban in 2016, the number of distress calls continued to rise unabated.
7. These concerns persist despite the existence of legislation like the Labour Institutions Act, Cap. 234, which provides for the registration and regulation of employment bureaus and agents. The Employment Act, Cap. 226, outlines the requirements for foreign contracts of service and mandates.
8. The increase in distress calls also resulted in heightened media exposure, both social and mainstream, regarding the issue, along with a rise in academic literature on the subject. The following are a few examples that illustrate the magnitude of the policy conundrum, which includes systemic and implementation gaps in labor migration policy and underscores the urgency for remedial measures.
9. The Guardian reported '*Modern-day slavery: Kenyan domestic workers tell of abuse in Saudi Arabia*'. The Kenyan government is being urged to act as migrant housekeepers complain of physical, mental, and sexual abuse in the Gulf state³.
10. Talk Africa reported on "*Death and suffering: Experiences of Kenyan Domestic workers in Saudi Arabia*."⁴
11. Nation on YouTube reported that "*Kenyan workers in Riyadh, Saudi Arabia, appeal to the government to help them return home*."⁵
12. Pulselive online platform reported that "*Kenyans in Saudi Arabia given 10-day ultimatum*"⁶
13. East Africa reported '*How Kafala system in Arab Gulf states is leading to the death of Kenyan Girls*'⁷

³ Report by Caroline Kimeu and Ventura Kireki, Tuesday, 27 September 2022, 0730 BST

⁴ Report by Moffin Njoroge, 20 October 2024

⁵ Retrieved from <https://www.youtube.com/watch?v=i-D3vgvu20A> on 29 October 2024

⁶A report by Janet Ndila, 5th April 2017, 2.24pm retrieved at <https://www.pulselive.co.ke/bi/politics/in-kenya-kenyans-in-saudi-arabia-given-90-day-ultimatum/gv24hd0> on 29 October 2024

14. In 2022, the Commission on Administrative Justice and the Office of the Ombudsman, instituted an investigation following several media reports highlighting the unfair mistreatment, injustice, and oppression of Kenyan domestic workers in the Kingdom of Saudi Arabia. Specifically, the investigation sought to examine the existing labor policies, processes, and procedures relating to recruiting and managing Kenyan migrant domestic workers in Saudi Arabia. The Ombudsman investigations revealed systemic gaps in existing labor policies, processes, and procedures relating to the recruitment and management of Kenyan migrant domestic workers in Saudi Arabia⁸.
15. In 2022, the government, through the Cabinet Secretary, Ministry of Foreign Affairs, Mr. Macharia Kamau, while pushing for a temporary ban on the recruitment and exploitation of Kenyan domestic workers to Saudi Arabia, acknowledged that at least 41 Kenyans had died in nine months.⁹
16. The Ministry of Labour, through the Cabinet Secretary, Mr Chelugui, reported that 93 Kenyans died while working in the Middle East between 2019 and 2021. Further, the causes of death ranged from cardiac arrest, COVID-19, cancer, childbirth, respiratory complications, Meningitis, tuberculosis, suicide, and accidents. Additionally, the Ministry added that at least 1,908 distress calls were reported between 2019 and 2021, with 883 being reported in 2019-2020 and 1,025 in 2020-21¹⁰.
17. A study titled "*Access to Justice for Kenyan Emigrant Workers: the Plight of Kenyan Domestic Workers in Saudi Arabia*" in its findings expressed a gap in legislation. Further, Saudi Arabia was not a signatory to core international human rights conventions and laws on migration. Therefore, the enforcement of rights and access to justice for workers in Saudi Arabia was found to be problematic.¹¹

⁷A report by John Kamau. 11th October 2022. Retrieved at <https://www-theeastafrican-co-ke.webpkgcache.com/doc/-/s/www.theeastafrican.co.ke/tea/news/east-africa/how-kafala-system-is-leading-to-the-death-of-kenyan-girls-3981454> on 29 October 2024

⁸ The Commission on Administrative Justice. Office of the Ombudsman. 2022. A report on the systematic investigation into the plight of Kenyan migrant domestic workers in the Kingdom of Saudi Arabia, at <https://www.ombudsman.go.ke>, retrieved on 29 October 2024.,

⁹ The CS Foreign Affairs appearing before the National Assembly Committee on Labour in 2022, retrieved at <https://www.youtube.com/watch?v=H4jA6R1XdmI> on 29 October 2024.

¹⁰ The CS appearing before the National Assembly, Labour, and Social Welfare Committee in July 2021

¹¹ Mukobi, Benah, N. 2022. <http://erepository.uonbi.ac.ke/handle/11295/160560?show=full>

1.1 The Journey Towards the Legal Framework: The Labour Migration and Labour Migration Management Bill, 2024

18. Kenya has ratified and domesticated ILO Convention No. 143 on Migrant Workers and Convention 97 on Migration for Employment. Similarly, it is a signatory to the East African Community Common Market Protocol. It is also guided by the Inter-Governmental Authority on Development (IGAD) Revised Regional Migration Policy Framework and, later, the UN Global Compact.
19. The Global Compact, adopted during an intergovernmental conference held in Marrakech on 10th and 11th December, 2018, is the "*global call for safe, regular and humane migration*." It presents a cooperative framework addressing migration in all its dimensions. It is anchored on various instruments like the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Others include the International Labour Organization conventions on promoting decent work and labour migration, and the 2030 Agenda for Sustainable Development, among several others.
20. The Global Compact, while non-legally binding, is a cooperative framework that builds on the commitments agreed upon by Member States, including Kenya, in the New York Declaration for Refugees and Migrants. This non-binding nature allows for flexibility and adaptability in its implementation, ensuring it can be tailored to the specific needs of each country.
21. Kenya, through the National Coordination Mechanism 2020,¹² has continually monitored the level of implementation of the principles and objectives of the Global Compact on migration with its 23 key objectives, principles and values. Objectives are related to the use of accurate, disaggregated migration data as a foundation for evidence-informed decision-making and policies, addressing the drivers and structural factors that compel migration, facilitating migrant's legal identification and registration, facilitating fair and ethical recruitment and safeguarding conditions that ensure decent work; address and reduce vulnerability in migration, enhance consular protection, assistance and cooperation throughout the migration cycle and strengthen international cooperation and global partnership for safe, orderly and regular migration among others.

¹² National Coordination Mechanism (NCM) Secretariat. 2020. Kenya Country Report on implementation of the Principles and Objectives of Global Compact on Migration (GCM).

22. In 2019, the government acknowledged the existence of policy frameworks governing labour migration, which include the National Diaspora Policy, National Employment Policy and Strategy for Kenya and Foreign Policy. However, Labour Migration issues are fragmented in various policy documents and implemented by different agencies, resulting in uncoordinated implementation. Additionally, existing legal frameworks advocate for decent work and protect the rights of workers. These include the Constitution 2010, the Immigration and Citizenship Act 2011, the Counter-Trafficking in Persons Act 2010, the National Employment Authority Act 2016, the Employment Act 2007, and the Labour Institutions Act 2007. However, the setback is enforcement and a lack of a comprehensive framework on labour migration¹³.
23. However, noting the gaps in policy and legislation, the government is in the process of developing a comprehensive National Labour Migration policy to provide a coordinated policy framework for the implementation of programs on labour migration and to reinforce other existing policies. Further, it is finalizing the Labour Migration Management Bill to reinforce the legal framework on labour migration management¹⁴.
24. In 2021, during the 12th Parliament, the Senate, in its crucial oversight and legislative roles, was part of the Kenyan delegation alongside the Ministry of Labour for a visit to the Gulf region. The study visit took place between 10th and 20th April 2021 and comprised members of the Standing Committee on Education and Labour Social Welfare. The goal of the visit was to review the Bilateral Labor Agreements (BLAs) for domestic workers and to establish firsthand the goings-on in key migrant destinations. The visit took place against the backdrop of rising numbers of Kenyans leaving for domestic jobs in the Middle East and a corresponding increase in distress calls. The delegation visited the Kingdom of Saudi Arabia and Dubai.
25. Thereafter, the Committee held sessions with the Ministry of Labour and Social Protection, the Ministry of Foreign Affairs (MFA) (currently the Ministry of Foreign and Diaspora Affairs), the Ministry of Interior and National Coordination of Government (State Department of Immigration), the Nation

¹³ Eng. Peter K. Tu then Principal Secretary State Department for Labour, in his remarks dubbed “*Kenya Labour Migration: Trends, Challenges, Management and Potential Areas for Cooperation*”. The Regional Ministerial Forum on Harmonizing Labour Migration Policies in the East and Horn of Africa, at Intercontinental Hotel, Nairobi 20th, January 2019

¹⁴ Ibid. 13

Employment Authority (NEA), the Recruitment Agencies – Association of Skilled Migrant Agencies of Kenya (ASMAK), and the Kenya Association of Private Employment Agencies (KAPEA).

26. In its report '*Labour migration, opportunities, challenges and policy implications*', the Committee made significant recommendations. Among other specific observations and recommendations, the Committee proposed that the Ministry of Labour institute practical policy, legislative and/ or administrative solutions to existing labor migration processes.
27. Sessional Paper No. 5 of 2023 on the National Policy on Labour Migration was presented in Parliament on 14th September, 2023. The main objective of the policy is to ensure coherence among migration policies and other legal frameworks relevant to labor migration governance in Kenya, thereby promoting a unified approach to labor migration.
28. The policy is anchored on three broad policy priorities: promoting good governance in labour migration, protecting migrant workers, promoting their welfare and that of their families and optimizing labour migration for development.
29. The policy outlines strategies upon which the three policy priorities will be implemented. These are: enhanced coordination of labour migration management, legal and institutional framework, cooperation and partnerships, promotion of fair recruitment and regulation of private employment agencies, labour migration research, statistics and information, protection of the rights of migrant workers and pre-departure training and orientation., Others are protection of migrant workers and irregular status, counter-trafficking and anti-smuggling of persons, enhanced social protection for migrant workers, enhanced competitiveness and employability, return and reintegration and capacity building
30. In implementing the strategies, the policy seeks to address the following emerging issues: weak coordination of labor migration management, lack of a comprehensive policy and legal framework, inadequate Bilateral Labour Agreements (BLAs), inadequate regulatory framework for private employment agencies, and lack of reliable labour market information. Others are adverse effects of migration of healthcare professionals, protection of migrant workers, culture shocks, trafficking and smuggling of persons, including child labour,

inadequate return, reintegration and social protection mechanisms and institutional capacities.

1.2 Overview of Labour Migration and Management Bill 2024

31. The Labour Migration (No.2) Bill, 2024 seeks to address the challenges faced by migrant workers both before, during and in the countries of destination. These challenges include inadequate coordination, weak regulation of recruitment agencies, violation of migrant workers' fundamental rights, lack of accurate, up-to-date and reliable data and information on labor migration and migrant workers, weak cooperation and partnerships between countries and regions in international labor migration management and lack of effective mechanisms for return and reintegration.
32. The Bill shall apply to the following institutions and persons: (a) private employment agencies; (b) the recruitment of Kenyan citizens for employment in Kenya to a foreign country; and (c) migrant workers.

1.3 Key Provisions of the Labour Migration and Management Bill 2024

33. Clause 5 of the Bill is on *Conditions for the deployment of migrant workers*, where it provides for the deployment of migrant workers to countries that, among other things—
 - a. have existing labor and social laws protecting the rights of migrant workers;
 - b. are signatory to multilateral conventions, declarations or resolutions relating to the protection of migrant workers; and
 - c. have existing bilateral agreements or arrangements with the government protecting the rights of migrant workers.
34. Clause 6 of the Bill seeks to **strengthen the role of the National Employment Authority (NEA)** by providing its functions as follows -
 - a) register and regulate private employment agencies;
 - b) develop pre-departure programs for migrant workers;
 - c) monitor the implementation of the pre-departure orientation programs;
 - d) identify and create awareness of employment opportunities in any foreign country and facilitate access to the opportunities by migrant workers;
 - e) verify and approve job orders emanating from private employment agencies;
 - f) collect, analyze and disseminate data on foreign employment;

- g) develop and implement programs necessary to safeguard the rights and welfare of migrant workers;
 - h) develop and implement a return and reintegration program for migrant workers;
 - i) receive and investigate complaints from migrant workers, job seekers, private employment agencies or any person; and
 - j) create public awareness on safe, regular and orderly labor migration.
35. Clause 8 of the Bill is on **Multi-Agency Committee on Vetting of Private Employment Agencies**, where it provides that the Committee shall incorporate the following office holders and will be charged with vetting and approving applications for registration made by private employment agencies -
- (a) The Principal Secretary responsible for matters relating to labor or his representative;
 - (b) The Principal Secretary responsible for matters relating to foreign affairs or his representative;
 - (c) The Commissioner for Labour;
 - (d) A representative of private employment agencies nominated by the largest and most representative association of private employment agencies and appointed by the Cabinet Secretary;
 - (e) The Director of Criminal Investigations or his representative;
 - (f) The Director-General of the National Intelligence Service or his representative;
 - (g) The Director of Immigration or his representative; and
 - (h) The Director-General of the National
36. Clause 11 of the Bill provides for the **deployment of a Labour Attache**. According to the Bill, the Cabinet Secretary, for matters relating to Labour, shall deploy a labor attaché to serve in each Kenya Mission. The attachés are to -
- (a) seek employment opportunities for Kenyans,
 - (b) authenticate job orders,
 - (c) vet destination employment conditions,
 - (d) collect and collate labor migration data and statistics on migrant workers,
 - (e) provide labor market information to migrant workers;
 - (f) analyze and advise the Cabinet Secretary on demand for foreign Labour in the respective country;
 - (g) attest foreign contracts of employment;
 - (h) supervise and coordinate the operations of safe houses for migrant workers in that country; and

- (i) submit to the Cabinet Secretary an annual report and recommendations relating to the conditions of migrant workers in respective countries.
37. Clause 12 of the Bill outlines the **duties of the Cabinet Secretary for Foreign Affairs with respect to labour migration**. In this regard, the office holders shall put in place mechanisms to safeguard the welfare of migrant workers, including –
- (a) developing and implementing strategies for their participation in the development,
 - (b) developing measures to enhance their safety and security,
 - (c) developing and implementing mechanisms for engagement and
 - (d) establishing an administrative and institutional framework for the coordination of matters relating to migrant workers.
38. Clause 13 of the Bill provides for **the role of county governments** which includes –
- (a) issuing county operating licenses to private employment agencies,
 - (b) establishing a database of migrant workers from specific counties in collaboration with the NEA,
 - (c) developing policies and programs offering incentives to migrant workers from specific counties to invest in,
 - (d) in consultation with the NEA, publicizing private employment agencies, job vacancies for workers outside the country,
 - (e) develop county-specific investment programs and
 - (f) facilitate, in, the reintegration of returning migrant workers to counties of origin in collaboration with the national government.
39. Clause 15 of the Bill also provides for **an online Migrant workers' portal to be established by NEA**, whose goal is to, among other things –
- a) facilitate the registration of private employment agencies and migrant workers,
 - b) provide details of all registered private employment agencies; and
 - c) act as a platform for interaction between the migrant workers, the national and county Governments, private institutions, investors, and other relevant institutions.
40. Clause 17 of the Bill describes **the conditions for the registration of private employment agencies**. Such private agencies will be expected to provide NEA with proof of –

- a) registration in Kenya as a company under the Companies Act, a partnership firm under the Partnerships Act, a limited liability partnership under the Limited Liability Partnership Act or a non-governmental organization under the Non-Governmental Organizations Coordination Act,
 - b) a county operating license,
 - c) financial capacity as prescribed by the Authority,
 - d) existence of new market,
 - e) experience in human resource management and
 - f) a duly notarized undertaking for liability for claims or damages for its commissions and omissions.
41. Clause 19 of the Bill also seeks to **protect** migrant workers by introducing a requirement for private employment agencies to execute **security bonds** with a bank or an insurance company registered and licensed in Kenya. The Cabinet Secretary for Labour will prescribe the specifics of such bonds, whose objective is to cover repatriation and other entitlements in the event of default by the private employment agency or the employer.
42. Clause 20 of the Bill **outlines instances when cancellation of registration for a private employment agency** is possible by the NEA. These include –
- a) instances of false or misleading information,
 - b) failure to comply with any requirement of law,
 - c) failure to file periodic returns,
 - d) violation of any condition of the certificate of registration,
 - e) failure to comply with any direction or order issued by the Authority or
 - f) fraudulent acquisition of registration.
43. Clause 24 of the Bill is on **job orders**. Approval of job orders shall be handled and attested by the relevant mission, which shall attest to a job order for foreign employment and thereafter be submitted by the private employment agency to NEA for approval.
44. Clause 25 of the Bill describes conditions for private employment agencies to **advertise for job openings**. They include –
- a) on condition that NEA has approved the advertisement, and
 - b) the advertisement is in the manner prescribed in regulations.
45. Clause 27 of the Bill **obligates private employment agencies** to –

- a) keep and maintain an up-to-date register of recruited workers and provide this to NEA as and when required,
- b) provide the contract of employment to the migrant worker at least fourteen days before the date of departure,
- c) ensure that a contract of employment complies with the provisions of any relevant written law, bilateral labour agreements and ensuring memoranda of understanding,
- d) keep and maintain any record for three years subsequent to the occurrence of the event recorded (as provided in regulation),
- e) notify NEA of any distress cases,
- f) inform NEA in writing of any change in the particulars stated in the application for a certificate of registration within thirty days of such change; and
- g) file such returns as may be prescribed in regulations.

46. Clause 31 of the Bill provides that the labour officer shall verify **attestation of foreign contracts of employment** and must comply with the following –

- a) the private employment agency is registered with NEA,
- b) the private employment agency has executed a security bond,
- c) the process is voluntary and not executed under duress, misrepresentation of facts;
- d) the terms and conditions of employment contained in the contract comply with approved job orders and the provisions of the employment laws;
- e) medically fitness of employee for the performance of the duties stipulated in the contract and a medical certificate issued,
- f) not bound to serve under any other contract of employment during the period provided in the foreign contract of employment; and
- g) pre-departure orientation has been undertaken.

47. Clause 29 of the Bill provides for **the role of the National Industrial Training Authority (NITA) in pre-departure training**. NITA, in collaboration with the NEA and other labour industry players, is charged with developing curricula on, among others -

- a) contract management,
- b) culture and laws of the countries of destination,
- c) social media management;
- d) attitudes on customer service;
- e) languages of the countries of destination;
- f) assessment of migrant workers' skills;

- g) certification of migrant workers' skills;
 - h) training, assessment and certification of homecare; and
 - i) financial literacy.
48. Clause 37 of the Bill also provides for **exemptions of its applicability on the departure of -**
- a) persons employed in the service of the national or county government who, with permission from a competent authority, are on official duty overseas for purposes of education or training, or employment with an international or multilateral organization,
 - b) students;
 - c) trainees;
 - d) tourists;
 - e) employed seafarers;
 - f) persons emigrating through self-initiated programs,
 - g) persons emigrating for medical treatment and care, religious activities, business or investment purposes;
 - h) dependent of any Kenyan citizen employed in a foreign country or lawfully staying in a foreign country;
 - i) persons who initially emigrated for education and later accepted employment in a foreign country; or
 - j) persons emigrating for purposes which are not in conflict with the purposes of this Act.
49. Clause 39 of the Bill outlines **the role of Inspectors**, with NEA charged with issuing a notice in the Gazette and appointing qualified persons, whether by name or by title of office, to be inspectors of the Authority to monitor compliance.
50. Clause 42 of the Bill bestows the **primary responsibility of repatriation of migrant workers and their belongings to the private employment agency** that deployed the worker in collaboration with the employer. Further, this must happen within one month of the death with all costs borne by the agency if –
- a) upon examination, the worker is found to be unfit for employment,
 - b) the worker fails to secure the employment signed under the contract, or
 - c) there is evidence of misrepresentation or mistake.
51. The Bill also **protects the agency in cases where termination** of employment is solely a result of the affected worker.

52. Clause 43 of the Bill provides the **fundamental principles upon which Bilateral Labour Agreements (BLA), MoUs and any other instruments should be concluded**, among them –
- a) promotion of fair recruitment,
 - b) protection of the migrant workers' rights,
 - c) safety and human dignity of migrant workers,
 - d) respect to international standards;
 - e) migrant workers' right to information; and
 - f) right for redress if rights are violated.
53. **Other provisions** of the Bill include –
- a) registration of migrant workers,
 - b) establishment of safe houses in destination countries, and
 - c) the power of the Cabinet Secretary to restrict labour migration to countries where Kenyans face distress.
54. Clause 51 of the Bill is the **consequential clauses** of the Bill which provide a harmonized legal framework for the regulation of private employment agencies and the recruitment of workers within and outside Kenya, safeguarding the rights and welfare of job seekers and migrant workers. As such, the Bill is geared towards consolidating the laws relating to labour migration.

CHAPTER TWO: OVERVIEW OF PUBLIC PARTICIPATION ON THE BILL

2.0 Committee Undertakings

55. The Committee held a total of six (6) meetings on the Bill, where it met with various stakeholders and considered the submissions. The Minutes of the meeting are annexed to this Report (Appendix 2).
56. The Committee published an advertisement in the daily newspapers on 24th September, 2024, inviting members of the public to submit written memoranda on the Bill. The advertisement was also posted on the Parliament website and social media platforms. A copy of the advertisement is annexed to this Report (Appendix 4.)
57. Subsequently, during consideration of the Bill, the Committee resolved to invite additional submissions from the key stakeholders, including the Ministry of Labour and Social Protection, the National Employment Authority and the State Department for Diaspora Affairs.
58. Copies of the written submissions are attached to this Report as Appendix 6. Additionally, a matrix analysing the stakeholder submissions clause-by-clause is annexed as Appendix 5. The Committee proceeded to consider the Bill extensively, together with the stakeholder submissions received thereon.

2.1 Public Hearing on the Labour Migration and Management Bill, 2024

59. The Committee held a public hearing session on 24th October, 2024, at 10.00 am in Bunge Tower. The following representatives of various government Ministries, Agencies, and institutions engaged with the Committee on the Bill. Cabinet Secretary, Ministry of Labour and Social Protection; Permanent Secretary, State Department for Diaspora Affairs; Director General, National Employment Authority (NEA), Kenya National Chamber of Commerce and Industry (KNCCI); and Association of Skilled Migrants Agencies of Kenya (ASMAK).
60. The Cabinet Secretary, Ministry of Labour and Social Protection, lauded the proposed legislation and argued that the Ministry would work closely with the

Committee to enrich the provisions. According to the State Department of Diaspora Affairs, the proposal is timely as it promotes and protects Kenya's interests in the diaspora. Protecting Kenyan workers' interests through the regulation and recruitment of Kenyan workers for both domestic and international employment. The Permanent Secretary, State Department of Diaspora Affairs acknowledged that the Bill proposes the most extensive set of changes to the legal framework governing labor migration in the country. As such, if enacted and assented to, the Act will provide for all migration policies in a single law.

61. The Permanent Secretary, further alluded that the department had engaged Kenyans in the diaspora, the proposed legislation, and critical issues that raised the migrant workers' welfare fund. The Bill proposes the establishment of the Kenya Migrant Workers Welfare Fund, which seeks to provide protection and assistance to migrant workers during migration, transit, and return. Additionally, the fund is expected to offer welfare services, including but not limited to invalidity benefits, medical assistance, and survivor benefits, among others.
62. However, the Kenyans in the diaspora believe that the mandatory contribution is likely to place an additional financial burden on migrant workers alongside the additional burden of fees for recruitment and other services. Further, there seems to be a lack of clarity and specifics on the benefits relating to repatriation, legal aid, and emergency support.
63. The KNCCI representative argued that the private recruitment agencies run businesses like any other small business in the country. Because of these, the proposed Bill should ensure the promotion of ease of doing business and should not be seen as introducing unnecessary hurdles. Specifically, KNCCI raised concerns about the requirement that the registration of private recruitment agencies should be pegged on proof of experience in human resources management.
64. The Committee also received submissions from the National Gender and Equality Commission (NGEC). In their submission, NGEC raised concerns about issues related to safe houses and welfare funds. In view of its mandate, the Commission also urges the state to take proactive steps in ratifying the Domestic Workers Convention 2011 (International Labour Organization (ILO No.189), as this will translate into ensuring the rights of migrant domestic workers are upheld in other member states.

2.2 Emerging Concerns from the Stakeholder Submissions on the Labour Migration and Management Bill, 2024

65. This section of the report synthesizes stakeholders' views on the various policy issues articulated in the Bill.

2.2.1 The long title of the Bill vis-à-vis the focus or gap the Bill seeks to address

66. The Ministry of Labour expressed concern about the long title. The Ministry argued that the title seems superfluous as it seeks to regulate private employment agencies, which are regulated within the framework of Sections 55, 56, 57 and 58 of the Labour Institutions Act, 2007. Consequently, it seeks to amend the Act contrary to the Constitution 2010 and other related laws. According to the Ministry, effective management of the labor migration process calls for a multi-agency effort that derives its scope and mandate from specialized powers, functions, roles, and competencies under respective statutes.

2.2.2 The clarity in the definition of 'Agencies.'

67. ASMAK sought to have the interpretation clause of the Bill provide clarity regarding the classification of agencies. According to ASMAK, the Bill should provide a clear definition and distinction between private employment agencies (PEAs) and private recruitment agencies (PRAs) in accordance with the ILO.

2.2.3 The Ultra Vires Consequence of Specific Provisions of the Bill

68. What exactly should be the focus of the Labour Migration and Management Bill 2024 vis-à-vis other existing legislation that establishes and regulates complementary aspects of labor migration processes? What exactly is the Bill seeking to address? This lack of clarity is with respect to other existing legislations like the Employment Act 2007, the Labour Institutions Act 2007, and the National Employment Authority Act 2016.
69. The Ministry of Labour argued that the Bill attempts to establish and regulate already existing agencies and institutions. For instance, the definition of 'Authority,' 'Committee,' 'Director General,' and 'private employment agency' under the clause on interpretation read together with clauses 6, 7, 8, 9, and 10 as an attempt to create and regulate institutions already provided for in other legislation. For instance, 'authority already in existence in the NEA Act 2016, the regulation of the Inter-ministerial Committee on Registration and Vetting of Employment Bureaus and Agencies is provided for in the Labour Institutions Act, 2007, the 'Director General' in the Bill is expected to oversee an institution

established in the Bill resulting in overlaps. Additionally, 'private employment agencies' are provided for in other laws. As such, the proposal to delete Clause 2, the definitions of 'Authority,' 'Committee,' 'Director General,' 'Private employment agency', and clauses 6, 7, 8, 9, 10, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 39, 40, 41, 44, 46, 52, and 53.

70. To address the foregoing, the Ministry proposes the establishment of the Office of the Secretary of Labour Migration Management to administer the new Act. Similar views were raised by the NGEC, which stated that the proposal should focus on migrant Labour and not workers, as there is existing legislation on the same.

2.2.4 Application of the Bill

71. The Ministry of Labour is of the view that the Bill should not apply to private employment agencies as they are regulated in another piece of legislation. The KNCCI, on the other hand, lauded the application of the Bill to migrant workers as they play a significant role in the labour migration ecosystem, yet their rights have been pushed to the periphery.

2.2.5 Introduction of Diaspora Placement Agency

72. The State Department of Diaspora Affairs seeks the inclusion of the Diaspora Placement Agency (DPA). According to the department, the agency will be charged with enhancing Kenya's labour migration framework and the global promotion of its workforce. The agency will also be expected to negotiate with foreign employers for the placement of Kenyan workers, safeguard the interests of migrant workers, and ensure fair contracts and ethical treatment, among others.
73. Other functions of the DPA include the following: introducing and marketing Kenya's talent to foreign employers and markets, providing information on Kenya's labor demographics, seeking job opportunities and updating listings, providing a database for available skills, facilitating pre-migration training, offering a system for worker registration, and developing a framework to incentivize diaspora remittances and economic engagement by harnessing diaspora savings, facilitating foreign direct investment, and promoting technology transfers.

2.2.6 Labour and Diaspora Attaches

74. The State Department for Diaspora proposes the introduction of a clause to provide for Diaspora attaches, who they argue will serve as the essential advocates and protectors of Kenyan workers' interests. Additional functions include offering support and advocacy for migrant workers, promoting employment opportunities for Kenyan workers in host countries, monitoring work conditions of migrant workers, collating and reporting data on the migrant workers, promoting awareness of migrant rights, and promoting the implementation of BLAs signed between the countries, among others.
75. However, Clause 11 of the Bill provides for Labour attaches, among other services such as counseling, supervision, and coordinating activities at the safe houses (Clause 48). Nevertheless, NGEK believes that these safe houses should be established within the precincts of Kenyan offices in the respective countries, and that the officials in those countries should be equipped with the requisite skills, including counseling and management of distress. According to NGEK, the Kenyan offices in these foreign countries have not been adequately equipped to address the concerns of migrant workers.

2.2.7 Conflict of Laws

76. Generally, the view of the Ministry of Labour was that the provisions of the Bill are likely to result in overlaps of responsibilities and roles by the various Agencies and institutions mandated to perform them, vide existing legislation (*see examples as described in the ultra vires consequence of specific provisions of the Bill*). Similarly, it is the view of the KNCCI that Clause 17(8) stipulating the certificates for registration shall, unless canceled earlier, be valid for a period of a year from the date issued, which is contradictory. According to the KNCCI, the new directive by the CS extending the validity period to two years supersedes the proposal.

2.2.8 The Composition of the Inter-ministerial Committee

77. The view of the KNCCI is that the inter-ministerial Committee provided in Clause 8 of the proposed Bill must be as inclusive as possible. According to KNCCI, various agencies contribute to the labour migration space. As such, their representation will ensure that the perspectives, concerns, and interests of all affiliate entities are taken into account. The issue of multiple stakeholders in the sub-sector was also a concern for ASMAK, which argued that the objectives and purpose of the Bill should reflect this stance.

2.2.9 Conditionalities for registration of private employment agencies and other requirements of the Agencies

78. The view of the KNCCI is that Clause 18(1)(a)(iv) should be excluded from the provision of the Act. They argue that non-governmental organizations (NGOs) are philanthropic entities by design, while private employment agencies operate for-profit businesses. The provision, as drafted, may result in conflict of interest with respect to the core mission and the regulatory frameworks of the laws that they operate under. KNCCI, therefore, calls for the exclusion of NGOs and urges that only duly registered and regulated commercial entities, subject to appropriate oversight and taxation, be allowed to operate within the sub-sector.
79. KNCCI further raised objections to the requirement that registration is tied to the demonstrated ability to explore new markets. The agency believes that imposing such a requirement could limit opportunities for individuals who aim to innovate within existing frameworks and markets or enhance competition in established areas. Therefore, they suggest that the clause should be modified for inclusivity and to recognize the diverse approaches being adopted by the agencies.
80. A further requirement for individuals in positions as directors of employment agencies to possess experience in human resource management (HRM) was considered too restrictive. According to KNCCI, the sub-sector is versatile and encompasses a diverse range of competencies that may not necessarily align with traditional HRM experience. Therefore, imposing such a narrow prerequisite is likely to limit the extensive pool of talent with potential for innovative leadership skills and professional experiences.
81. KNCCI was also of the view that legislating fees to be charged by agencies provided in Clause 27(2)(b) is ill-advised and unjust to the participating agencies. According to KNCCI, legislating such fees may lead to a situation where agencies are likely to violate the clause, as the law often lags behind the ever-changing industry practices.

2.2.10 Registration of migrant workers

82. Clause 34 (1) provides for the mandatory registration of all persons intending to travel to another country for purposes of foreign employment. However, Clause 37(f) excludes anyone immigrating through a self-initiated program. According to NGEAC, the call for registration for both migrant workers immigrating through an agency and those who are self-initiated should be voluntary.

83. The argument is that workers should be offered options and must have the right to choose whether to have their information shared and whether they require protection from the government. Therefore, NGEC further calls for the review of Clause 34(4)(5).

2.2.11 Migrant Welfare Fund

84. The Bill proposes to establish the migrant workers' welfare fund, which seeks to provide protection and assistance to migrant workers during migration, transit, and return. Additionally, the fund is expected to offer welfare services, including but not limited to invalidity benefits, medical assistance, and survivor benefits, among others.
85. However, according to the State Department for Diaspora Affairs, Kenyans in the diaspora believe that the mandatory contribution is likely to place an additional financial burden on them, given that they are already overwhelmed by costs such as recruitment fees. Therefore, the proposal should provide clarity on specific benefits related to repatriation, legal aid, and emergency support.
86. While supporting the creation of the migrant welfare fund, NGEC proposes introducing a miscellaneous provision in Part VI of the Bill stating that the CS in charge of Labour establishes a migrant workers' welfare fund, to be administered by the NEA. NGEC also believes that contributions to the fund should involve the government, employment agencies, and migrant workers.
87. Additionally, the purpose of the fund should be to address all welfare matters for workers in distress, including the repatriation of any migrant worker's remains. While supporting this position, NGEC believes that the employer or private employment agency should not be required to assume responsibility for repatriation, as enforcing this requirement may be challenging, especially in cases involving closed agencies. Therefore, the proposal is to amend Clause 42 to reflect this perspective. To streamline fund management, NGEC concludes by urging the CS to establish regulations.

2.2.12 Bilateral Labour Agreement

88. According to the NGEC, the objective of the proposed Bill is to safeguard the rights and welfare of migrant workers and to streamline the labor migration processes. As such, the government is obligated to enter into and sign the BLA without exception. The NGEC, therefore, believes that Clause 43 should be addressed accordingly.

2.2.13 Omitted policy areas that need inclusion in the Bill

89. ASMAK terms the Bill progressive but believes that the proposal should provide clarity on the following issues:
90. The responsibility of migrant workers in the termination of the process prior to departing from Kenya and after departing. This call was in view of the migrant workers' behavior in the county of destination.
91. Job security and compensation of recruiters with respect to penalties arising from delays in the process, fraudulent work demands, and calamities affecting work and migrant workers, for instance, pandemics, wars

CHAPTER THREE: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.0 Committee Observations

92. Having considered the Labour Migration and Management Bill, 2024 (Senate Bills No. 42 of 2024) and the submissions received thereon, the Standing Committee on Labour and Social Welfare makes the following observations -

- (a) There has been a growing number of Kenyans who have proceeded to Middle Eastern countries, mainly Saudi Arabia and Dubai, as domestic workers since 2014. Similarly, there has been an increase in reported cases of abuse and mistreatment, with calls to review the management of foreign employment.
- (b) The labour sector is rich with a myriad of policy frameworks governing labour migration issues, policies advocating for decent work and protecting the rights of workers. Among them are the Constitution of Kenya, 2010, National Diaspora Policy, National Employment Policy and Strategy for Kenya, Foreign Policy, Immigration and Citizenship Act 2011, Counter-Trafficking in Persons Act 2010, and the National Employment Authority Act 2016. Others are the Labour Institutions Act, Cap. 234, which provides for the registration and regulation of employment bureaus and agents, and the Employment Act, Cap. 226, outlining the requirements for foreign contracts of service and mandates.
- (c) Despite this, labour migration issues are fragmented across various policy documents and are implemented by different agencies, leading to uncoordinated implementation and lack of enforcement. Moreover, reports indicate systemic gaps in existing labour policies, processes, and procedures related to the recruitment and management of Kenyan migrant domestic workers.
- (d) In seeking to address the gaps in policy and legislation, in 2023, the Ministry of Labour and Social Protection developed Sessional Paper No. 5 of 2023, National Policy on Labour Migration. The labour migration policy was developed to ensure labour migration policies are in coherence with other policies and legal frameworks relevant to labour migration governance in the country.

- (e) Stakeholders presented varied views on the Bill, including those received from the implementing agencies expected to implement the Bill once it is assented to. To this end, the lack of a common position may impact the effective implementation of the law.
- (f) The Bill is timely as it seeks to address the challenges faced by migrant workers both before, during and in the countries of destination. These challenges include inadequate coordination, weak regulation of recruitment agencies, violation of the fundamental rights of migrant workers, lack of accurate, up-to-date and reliable data and information on labor migration and migrant workers, weak cooperation and partnerships between countries and regions in international labor migration management and lack of effective mechanisms for return and reintegration.

3.1 Committee Recommendations

93. Based on the above observations, the Committee recommends that -

- i. Further engagements between the Ministry of Labour and Social Protection and other implementing agencies are necessary to ensure seamless implementation of the Bill upon assent and ensure better governance in the sub-sector; and
- ii. The Senate passes the Labour Migration and Management Bill (No.2) Bill, 2024 (Senate Bills No.42 of 2024) with the following amendments –
 - a) That Clause 18 of the Bill be amended in subclause (1) by -
 - (a) deleting (d) and substituting thereof the following new paragraph –
(d)market viability
 - (b) deleting paragraph (e)
 - b) That clause 19 of the Bill be amended in subclause (2) by –
 - (a) deleting the word “and” appearing immediately after the words “certificate of registration;”
 - (b) inserting the following new paragraph immediately after paragraph (a)—
(aa) in the name of the private employment agency and shall not be transferable to any other person or entity; and
 - c) That clause 20 of the Bill be amended by inserting the following new subclause immediately after subclause (3)—

(3A) A person who provides false or misleading information in relation to the matters specified in subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

- d) That Clause 26 of the Bill be amended by deleting the word “may” appearing immediately after the words “The Authority” and substituting thereof the word “shall”.
- e) That Clause 43 of the Bill be amended in subclause (1) by deleting the word “may” appearing immediately after the words “national government” and substituting thereof the word “shall”.
- f) That Clause 49 of the Bill be amended in subclause (2) by –
 - (a) deleting the word “and” appearing immediately after the words “the security bond” in paragraph o.
 - (b) inserting the following new paragraph immediately after paragraph (o) —
 - (oa) reintegration services and programs including recognition of skills and qualifications acquired abroad; and

APPENDICES

- Appendix 1: Committee Stage Amendments on the Labour Migration and Management (No.2) Bill, 2024 (Senate Bills No. 42 of 2024)
- Appendix 2: Minutes of the Committee sittings
- Appendix 3: Copy the Labour Migration and Management (No.2) Bill, 2024 (Senate Bills No. 42 of 2024)
- Appendix 4: Advertisement as published in the Daily Nation and Star Newspapers
- Appendix 5: Public Participation Matrix
- Appendix 6: Copies of the Stakeholders' Submissions

