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# 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.***

10/07/25

**JUNE, 2025**

APPROVED
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## LIST OF ABBREVIATIONS/ACRONYMS

| | |
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| 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 oversights 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 oversights 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 oversights 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 Kenya[1]. 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.

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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 state*[3].

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]

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[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
[6] A 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 Arabia[8].

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 2020-21[10].

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]

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[7] A 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 Kindom 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.

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[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 migration[13].

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 management[14].

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

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[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 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 27of 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 31of 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, NGEC 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 NGEC, 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 NGEC, 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 |

**09th July, 2025**

The Clerk of the Senate
Parliament Buildings
**NAIROBI.**

**RE: COMMITTEE STAGE AMENDMENTS TO THE LABOUR MIGRATION AND MANAGEMENT (NO.2) BILL, 2024 (SENATE BILLS NO. 42 OF 2024)**

**NOTICE** is given that Sen. Recha Julius Murgor, the Chairperson of the Standing Committee on Labour and Social Welfare, intends to move the following amendments to the Labour Migration and Management (No.2) Bill, 2024 (Senate Bills No. 42 of 2024), at the Committee Stage—

**CLAUSE 18**

**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).

**CLAUSE 19**

**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

**CLAUSE 20**

**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.

**CLAUSE 26**

**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".

**CLAUSE 43**

**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".

**CLAUSE 49**

**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

Dated: 20th June, 2025.

..... .....

Murgor Julius Recha,
*Chairperson,*
*Committee on Labour and Social Welfare.*

**MINUTES OF THE FORTY- FOURTH (44TH) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN FOUR POINTS BY SHERATON HOTEL, MACHAKOS COUNTY ON FRIDAY, 20TH JUNE, 2025 AT 10.00 A.M.**

**MEMBERS PRESENT**

1. Sen. Lenku Seki Ole Kanar, MP - Member- *Ag. Chair*
2. Sen. Crystal Asige, MP - **Vice-Chairperson-** *virtually*
3. Sen. Alexander Munyi Mundigi, MP - Member- *virtually*
4. Sen. Miraj Abdulahi Abdulrahman, MP - Member - *virtually*
5. Sen. Beth Syengo, MP - Member - *virtually*

**APOLOGIES**

1. Sen. Julius Recha Murgor, CBS, MP - **Chairperson**
2. Sen. (Rtd.) Justice Stewart Madzayo, EGH, MP - Member
3. Sen. Erick Okong'o Mogeni, SC, CBS, MP - Member

**SECRETARIAT**

1. Ms. Mwanate Shaban - Principal Clerk Assistant II
2. Ms. Florence Waweru - Clerk Assistant II
3. Mr. Jackson Wekesa - Legal Counsel II
4. Ms. Nigma Adow - Research Officer III
5. Mr. James Ngusya - Serjeant-at-arms
6. Ms. Lomenen Junior - Media Officer
7. Mr. Nicholas Arusei - Audio Officer
8. Ms. Alice Nanyama - Executive Secretary I
9. Ms. Zahra Mohammed - Intern, DSEC

**MIN/SEN/SCLSW/254/2025: PRAYERS**

The meeting was called to order by the Chairperson at 10.05 a.m. followed by a word of prayer.

**MIN/SEN/SCLSW/255/2025: ADOPTION OF AGENDA**

The agenda was adopted after being proposed by Sen. Alexander Munyi Mundigi, MP and seconded by Sen. Miraj Abdulahi AbdulRahman, MP as follows –

1. Prayer;
2. Adoption of the Agenda;
3. Consideration of Committee Reports on-
   a) the Social Protection Bill, 2025 (National Assembly Bills No. 12 of 2025);
   b) the Labour Migration and Management( No. 2) Bill, 2024( Senate Bills No.42 of 2024)
4. Any Other Business; and
5. Date of the Next Meeting and Adjournment.

**MIN/SEN/SCLSW/256/2025: CONSIDERATION OF COMMITTEE REPORTS**

**A. Committee report on the Social Protection Bill, 2025 (National Assembly Bills No. 12 of 2025);**

1. The Committee considered the Report on the Social Protection Bill, 2025 (National Assembly Bills No. 12 of 2025), and the proposed Committee amendments on the Bill.

2. The Committee adopted the Report on the Social Protection Bill, 2025 (National Assembly Bills No. 12 of 2025), including the proposed amendments after being proposed by Sen. Beth Syengo, MP and seconded by Sen. Crystal Asige, MP.

**A. Committee report on the Labour Migration and Management (No. 2) Bill, 2024 (Senate Bills No.42 of 2024)**

1. The Committee considered the Report on the Labour Migration and Management (No.2) Bill, 2024 (Senate Bills No. 42 of 2024), and the proposed Committee amendments on the Bill.

2. The Committee adopted the Report on the Labour Migration and Management (No.2) Bill, 2024 (Senate Bills No. 42 of 2024), including the proposed amendments after being proposed by Sen. Beth Syengo, MP and seconded by Sen. Crystal Asige, MP.

**MIN/SEN/SCLSW/257/2025: ANY OTHER BUSINESS**

There was no other business.

**MIN/SEN/SCLSW/258/2025 ADJOURNMENT AND DATE OF THE NEXT MEETING**

The meeting was adjourned at 11.33 a.m. with the next meeting being on notice.



**SIGNATURE.....**
**(CHAIRPERSON: SEN. JULIUS RECHA MURGOR, CBS, MP)**

**DATE: Thursday, 26th June, 2025**

**MINUTES OF THE FORTY- SECOND (42ND) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN FOUR POINTS BY SHERATON HOTEL, MACHAKOS COUNTY ON THURSDAY, 19TH JUNE, 2025 AT 11.30 AM.**

**MEMBERS PRESENT**

| | |
|---|---|
| 1. **Sen. Lenku Seki Ole Kanar, MP** | - **Member- Ag. Chair** |
| 2. **Sen. Crystal Asige, MP** | - **Vice-Chairperson-** ***virtual*** |
| 3. Sen. Alexander Munyi Mundigi, MP | - Member - *virtual* |
| 4. Sen. Miraj Abdulahi Abdulrahman, MP | - Member - *virtual* |
| 5. Sen. Beth Syengo, MP | - Member - *virtual* |

**APOLOGIES**

| | |
|---|---|
| 1. Sen. Julius Recha Murgor, CBS, MP | - **Chairperson** |
| 2. Sen. (Rtd.) Justice Stewart Madzayo, EGH, MP | - Member |
| 3. Sen. Erick Okong'o Mogeni, SC, CBS, MP | - Member |

**SECRETARIAT**

| | |
|---|---|
| 1. Ms. Mwanate Shaban | - Principal Clerk Assistant II |
| 2. Ms. Florence Waweru | - Clerk Assistant II |
| 3. Mr. Jackson Wekesa | - Legal Counsel II |
| 4. Ms. Nigma Adow | - Research Officer III |
| 5. Mr. James Ngusya | - Serjeant-at-arms |
| 6. Ms. Lomenen Junior | - Media Officer |
| 7. Mr. Nicholas Arusei | - Audio Officer |
| 8. Ms. Alice Nanyama | - Executive Secretary |
| 9. Ms. Zahra Mohammed | - Intern, DSEC |

**MIN/SEN/SCLSW/244/2025: PRAYERS**

The meeting was called to order by the Chairperson at 11.40 a.m. followed by a word of prayer.

**MIN/SEN/SCLSW/245/2025: ADOPTION OF AGENDA**

The agenda was adopted after being proposed by Sen. Alexander Munyi Mundigi, MP and seconded by Sen. Miraj Abdulahi Abdulrahman, MP as follows –

1. Prayer;
2. Adoption of the Agenda;
3. Consideration of Committee Amendments on the Labour Migration and Management (No. 2) Bill, 2024 (Senate Bills No.42 of 2024);
4. Any Other Business; and
5. Date of the Next Meeting and Adjournment.

**MIN/SEN/SCLSW/246/2025: CONSIDERATION OF COMMITTEE AMENDMENTS ON THE LABOUR MIGRATION AND MANAGEMENT (NO. 2) BILL, 2024 (SENATE BILLS NO. 42 OF 2024)**

**A. Committee briefing**

1. The Committee was briefed on the proposed Committee Stage amendments to the Labour Migration and Management (No. 2) Bill, 2024 (Senate Bills No. 42 of 2024). It was noted that the amendments were intended to enhance regulatory clarity, improve oversight of private employment agencies, and strengthen the roles of the Authority and the national government in managing labour migration.

2. The Committee considered and approved the following key amendments:
    1. **Clause 18** – Amended by replacing paragraph (d) with "market viability" and deleting paragraph (e) to streamline the criteria for licensing.
    2. **Clause 19** – Amended to specify that a license shall be issued in the name of the private employment agency and shall not be transferable.
    3. **Clause 20** – A new subclause was introduced making it an offence to provide false or misleading information, punishable by a fine not exceeding one million shillings or imprisonment not exceeding two years, or both.

4. **Clause 26** – The word "may" was replaced with "shall" to make the Authority's responsibilities mandatory.
5. **Clause 43** – Similarly amended to replace "may" with "shall," making the involvement of the national government obligatory.
6. **Clause 49** – Amended to introduce reintegration services and programs for returning migrant workers, including the recognition of skills and qualifications acquired abroad.

3. The Committee was also briefed on the stakeholder submissions to the Labour Migration and Management (No. 2) Bill, 2024. It was noted that a few proposals were accepted, including the removal of the requirement to demonstrate a new market under Clause 19, revision of director qualification criteria, making security bonds non-transferable (Clause 20), introducing penalties for false or misleading information (Clause 21), mandating the development of a code of conduct (Clause 26), and requiring welfare provisions (Clause 43).
4. The Committee further noted that the majority of stakeholder proposals were declined on grounds that they were already addressed in the Bill or existing legislation, would duplicate structures, create administrative burdens, or fall outside the scope of the Bill—such as proposals on creating a new office, diaspora attachés, or a migrant welfare fund.
5. It was observed that the Bill sufficiently safeguards migrant workers while ensuring clear and efficient regulatory frameworks.

## B. Committee comments and observations

1. **Clause 18**: The term "market viability" strengthens licensing criteria, while deleting paragraph (e) simplifies the provision.
2. **Clause 19**: Making licenses non-transferable ensures better regulatory control and prevents misuse by unvetted parties.
3. **Clause 20**: Introducing penalties for false or misleading information promotes accountability among employment agencies.
4. **Clause 26 & 43**: Replacing "may" with "shall" removes ambiguity and reinforces mandatory action by the Authority and national government.
5. **Clause 49**: Reintegration services, including recognition of skills, support returning migrant workers and reduce risks of re-migration.

## C. Committee resolution

The Committee affirmed that the Bill, with the incorporated amendments, would provide an adequate legal framework for the protection of migrant workers and effective regulation of labour migration.

**MIN/SEN/SCLSW/247/2025: ANY OTHER BUSINESS**

There was no other business.

**MIN/SEN/SCLSW/248/2025 ADJOURNMENT AND DATE OF THE NEXT MEETING**

The meeting was adjourned at 1.35 p.m. with the next meeting being after the break.



**SIGNATURE.....**
**(CHAIRPERSON: SEN. JULIUS RECHA MURGOR, CBS, MP)**

**DATE: Thursday, 26th June, 2025**

**MINUTES OF THE THIRTY-SEVENTH (37TH) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN HILTON GARDEN INN, MACHAKOS COUNTY ON FRIDAY, 13TH JUNE, 2025 AT 9.00A.M.**

**MEMBERS PRESENT**

| | | |
|---|---|---|
| 1. | Sen. Julius Recha Murgor, CBS, MP | - **Chairperson** |
| 2. | Sen. Crystal Asige, MP | - **Vice-Chairperson** |
| 3. | Sen. Alexander Munyi Mundigi, MP | - Member |
| 4. | Sen. Lenku Seki Ole Kanar, MP | - Member |
| 5. | Sen. Miraj Abdulahi Abdulrahman, MP | - Member |
| 6. | Sen. Beth Syengo, MP | - Member |

**APOLOGIES**

| | | |
|---|---|---|
| 1. | Sen. (Rtd.) Justice Stewart Madzayo, EGH, MP | - Member |
| 2. | Sen. Erick Okong'o Mogeni, SC, CBS, MP | - Member |

**SECRETARIAT**

| | | |
|---|---|---|
| 1. | Ms. Veronica Kibati | - Deputy- Director, DSEC |
| 2. | Ms. Mwanate Shaban | - Principal Clerk Assistant II |
| 3. | Ms. Florence Waweru | - Clerk Assistant II |
| 4. | Mr. Jackson Wekesa | - Legal Counsel II |
| 5. | Ms. Nigma Adow | - Research Officer III |
| 6. | Mr. James Ngusya | - Serjeant-at-arms |
| 7. | Ms. Lomenen Junior | - Media Relations Officer |
| 8. | Mr. Nicholas Arusei | - Audio Officer |
| 9. | Ms. Alice Nanyama | - Executive Secretary |
| 10. | Ms. Zahra Mohammed | - Intern, DSEC |

**MIN/SEN/SCLSW/217/2025: PRAYERS**

The meeting was called to order by the Chairperson at 9.25 a.m. followed by a word of prayer.

**MIN/SEN/SCLSW/218/2025: ADOPTION OF AGENDA**

The Agenda was adopted after being proposed by Sen. Alexander Munyi Mundigi, MP and seconded by Sen. Lenku Seki Ole Kanar, MP as follows –

1. Prayer;
2. Adoption of the Agenda;
3. Consideration of the Public matrix on the Labour Migration and Management (No. 2) Bill, 2024 (Senate Bills No. 42 of 2024) (***Committee Paper No. 31***)
4. Any Other Business; and
5. Date of the Next Meeting and Adjournment.

**MIN/SEN/SCLSW/219/2025: CONSIDERATION OF THE PUBLIC MATRIX ON THE LABOUR MIGRATION AND MANAGEMENT (NO. 2) BILL, 2024( SENATE BILLS NO.42 OF 2024)**

**A. Committee briefing**

1. The Committee was briefed on the Labour Migration and Management (No. 2) Bill, 2024 (Senate Bills No. 42 of 2024), through a detailed matrix outlining stakeholder submissions, proposed amendments and corresponding Committee determinations.
2. The Committee thereafter proceeded to consider the remaining part of the matrix that had been deferred during its previous meeting held on Wednesday, 11th June, 2025 at 1.00 p.m. The section of the matrix that was considered is annexed to these minutes as Annex 1.

**B. Committee resolution**

That the Committee Report on the Bill should be prepared for the Committee's consideration and adoption, together with the proposed Committee Stage amendments.

**MIN/SEN/SCLSW/220/2025: ANY OTHER BUSINESS**

There was no other business

**MIN/SEN/SCLSW/221/2025 ADJOURNMENT AND DATE OF THE NEXT MEETING**

The meeting was adjourned at 11.25 a.m. with the next meeting being on notice.



**SIGNATURE.....**
**(CHAIRPERSON: SEN. JULIUS RECHA MURGOR, CBS, MP)**

**DATE: Thursday, 19th June, 2025**

**MINUTES OF THE THIRTY-FIFTH (35TH) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM 8, FIRST FLOOR, BUNGE TOWER ON WEDNESDAY, 11TH JUNE, 2025 AT 1.00 PM.**

**MEMBERS PRESENT**

| | |
|---|---|
| 1. Sen. Julius Recha Murgor, CBS, MP | - **Chairperson** |
| 2. Sen. Crystal Asige, MP | - **Vice-Chairperson** - *Virtually* |
| 3. Sen. Alexander Munyi Mundigi, MP | - Member |
| 4. Sen. Lenku Seki Ole Kanar, MP | - Member- *Virtually* |

**APOLOGIES**

| | |
|---|---|
| 1. Sen. (Rtd.) Justice Stewart Madzayo, EGH, MP | - Member |
| 2. Sen. Erick Okong'o Mogeni, SC, CBS, MP | - Member |
| 3. Sen. Miraj Abdulahi Abdulrahman, MP | - Member |
| 4. Sen. Beth Syengo, MP | - Member |

**SECRETARIAT**

| | |
|---|---|
| 1. Ms. Mwanate Shaban | - Principal Clerk Assistant II |
| 2. Ms. Florence Waweru | - Clerk Assistant II |
| 3. Mr. Jackson Wekesa | - Legal Counsel II |
| 4. Ms. Ndindi Kibathi | - Research Officer III |
| 5. Mr. Nicholas Arusei | - Audio Officer |
| 6. Mr. James Ngusya | - Serjeant-at-arms |
| 7. Ms Zahra Mohammed | - Intern DSEC |

**MIN/SEN/SCLSW/207/2025: PRAYERS**

The meeting was called to order by the Chairperson at 1.25 p.m. followed by a word of prayer.

**MIN/SEN/SCLSW/208/2025: ADOPTION OF AGENDA**

The Agenda was adopted after being proposed by Sen. Alexander Munyi Mundigi, MP and seconded by Sen. Sen. Crystal Asige, MP as follows –

1. Prayer;
2. Adoption of the Agenda;
3. Consideration of the Public matrix on the Labour Migration and Management (No. 2) Bill, 2024 (Senate Bills No.42 of 2024); (***Committee Paper No. 31***);
4. Any Other Business; and
5. Date of the Next Meeting and Adjournment.

**MIN/SEN/SCLSW/209/2025: CONSIDERATION OF THE PUBLIC MATRIX ON THE LABOUR MIGRATION AND MANAGEMENT (NO.2) BILL, 2024 (SENATE BILLS NO.42 OF 2024)**

**A. Committee briefing**

1. The Committee was briefed on the Labour Migration and Management (No. 2) Bill, 2024 (Senate Bills No. 42 of 2024), through a detailed matrix outlining stakeholder submissions, proposed amendments and corresponding Committee determinations.
2. The Committee considered the matrix in part but, due to time constraints, deferred the remaining sections for further consideration. The section of the matrix that was considered is annexed to these minutes as Annex 1.

**B. Committee resolutions**

1. To conclude the consideration of the public participation matrix during its retreat scheduled to commence on Thursday, 12th June 2025 in Machakos County;
2. To include in the retreat programme the consideration of the Committee's reports on the Social Protection Bill, 2025 (National Assembly Bills No. 12 of 2025), and the Petition concerning former employees of Kenya Breweries Limited; and
3. That the Chairperson would write to the Speaker of the Senate to formally request an extension of time for the consideration of the Social Protection Bill, 2025 (National Assembly Bills No. 12 of 2025).

**MIN/SEN/SCLSW/210/2025: ANY OTHER BUSINESS**

There was no other business

**MIN/SEN/SCLSW/211/2025** **ADJOURNMENT AND DATE OF THE NEXT MEETING**

The meeting was adjourned at 2. 24 p.m. with the next meeting being on notice.



**SIGNATURE**.....

**(CHAIRPERSON: SEN. JULIUS RECHA MURGOR, CBS, MP)**

**DATE: Thursday, 19th June, 2025**

**ANNEX 1**

**MATRIX ON THE LABOUR MIGRATION AND MANAGEMENT (NO.2) BILL, 2024**

**(SENATE BILLS NO. 42 OF 2024)**

**List of Stakeholders**

1. Ministry of Labour and Social Protection
2. National Gender and Equality Commission (NGEC)
3. Council of Governors (COG)
4. Ministry of Foreign and Diaspora Affairs, State Department for Diaspora Affairs (SDDA)
5. Association of Skilled Migrants Agencies of Kenya (ASMAK)
6. Kenya National Chamber of Commerce and Industry (KNCCI)
7. National Intelligence Service
8. George Chacha
9. Kwale County Librarians

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE DETERMINATION |
|---|---|---|---|---|
| Long title | Ministry of Labour and Social Protection | Amend to read—<br><br>*AN ACT of Parliament to provide for the legal framework to regulate and streamline the recruitment of workers within and outside Kenya; safeguard the rights and welfare of job seekers* | The long title attempts to regulate private employment agencies and attempts to amend the Labour Institutions Act. | REJECT—<br>Reference to "Office of the Secreta Labour Migration Management" misplaced as that is not an office envision in the Bill. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE DETERMINATION |
|---|---|---|---|---|
| | | *and migrant workers; to establish Migrant Workers Welfare Fund and the Office of the Secretary, Labour Migration Management: and for connected purposes.* | | |
| | National Gender and Equality Commission (NGEC) | Delete the word "*within*" from the long title. | There is already legal framework to regulate recruitment of workers within the country. | REJECT – The labour migration process starts fr within the country and the Bill regula some conduct within the country |
| 2 | Ministry of Labour and Social Protection | Delete the definition of "*Authority*." | The same is already defined under the National Employment Authority Act. | REJECT – It is necessary to cross-reference to the National Employment Authority Act (CA 227) for drafting clarity. |
| | | Delete the definition of "*Committee.*" | Already provided for under the Labour Institutions Act. | REJECT – This is a proposed Multi Agency Committ on Vetting of Private Employment Agenc established under Section 8 of the Bill and different from the "Work Perm |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE DETERMINATION |
|---|---|---|---|---|
| | | | | Committee" under Section 8 of the Labc Institutions Act. . |
| | | Delete definition of "*Director General*" and substitute with definition of *"Secretary of Labour Migration Management."* | Director General is already defined under the National Employment Authority Act. | REJECT – It is necessary to cross-reference to t National Employment Authority Act (C/ 227) for drafting clarity. |
| | | Delete definition of *"private employment agencies."* | They are provided in other statutes. | REJECT – It is necessary to provide a definition in tl statute for drafting clarity. |
| | ASMAK | Provide clear definition of agencies operating in Kenya according to ILO definitions, distinguishing between private employment agencies (PEAs) and private recruitment agencies (PRAs). | This ambiguity raises concerns about the legal status and regulatory oversight of these entities under Kenyan law. | REJECT – The definition of PEAs as provided in t Bill aligns to ILO Convention 181. |
| 3 | Council of Governors (COG) | Incorporate skills based recruitment to promote ethical and transparent overseas employment. | There is need to prioritise strict skills assessment before deployment. | REJECT – Skills-based recruitment would cre unnecessary bureaucratic barriers that cou limit legitimate employment opportunit |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE DETERMINATION |
|---|---|---|---|---|
| | | | | for Kenyan workers seeking overse employment and fails to recognise on the j training.<br><br>Recognition of Prior Learning (RP frameworks already exist to validate work competencies without imposing additior restrictive assessments. |
| | ASMAK | Include protecting all parties involved in the labor migration industry, including the migrants and the private agencies. | Framework seeks to establish equitable practices that safeguard the rights of both labor migrants and recruitment agencies. | REJECT –<br>The focus of the Bill is protection of Labc Migration.<br><br>Section 4 of the Bill specifies that it application extends to private agencies, a they are therefore protected. |
| 4 | Ministry of Labour and Social Protection | Delete 4 (a) | Catered for in other statutes. | REJECT-<br>4(a) provides that the Act shall apply private employment agencies, which is t primary focus of the Bill. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE DETERMINATION |
|---|---|---|---|---|
| | ASMAK | Recognize migrant workers as key stakeholders directly impacted by the provisions of the Bill. | Given the significant influence that the Bill's regulations and protections will have on their rights, working conditions, and welfare. | REJECT-<br>Section 3 on the *Objects of the Act* provic for and recognises migrant workers who a the primary focus group of the Bill. |
| 5 | COG | Include a condition- Deployment shall be contingent upon meeting specific skill and qualifications criteria. | This will provide merit based recruitment. | REJECT –<br>Skills-based recruitment would cre unnecessary bureaucratic barriers that cou limit legitimate employment opportunit for Kenyan workers seeking overs employment and fails to recognise on the j training.<br><br>Recognition of Prior Learning (RP frameworks already exist to validate work competencies without imposing additio restrictive assessments. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE DETERMINATION |
|---|---|---|---|---|
| 6 | Ministry of Labour and Social Protection | Delete and introduce provisions on establishment of Office of the Secretary of Labour Migration Management. | The Office of the Secretary of Labour Migration Management should be the administrator of the Bill and not the Director General under the National Employment Authority Act. | REJECT-<br>The existing National Employme Authority framework provides adequa administrative capacity. Creating a n office would result in duplication functions and unnecessary administrati costs. The Director General under t National Employment Authority Act h sufficient mandate and resources implement the Bill effectively. |
| | COG | Insert—<br>*(a) Conduct periodic third party audits and merit based performance reviews of its operations under the Act to ensure transparency and effectiveness.* | This will strengthen governance within the Authority. | REJECT—<br>Existing oversight mechanisms throu Parliament, the Auditor General, a relevant Cabinet Secretary provi sufficient accountability. Mandatory thi party audits would impose additio financial burden on the Authority and co compromise operational independen Internal performance review mechanis are more appropriate and cost-effective. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE DETERMINATION |
|---|---|---|---|---|
| | ASMAK | Require the Authority to maintain comprehensive and up-to-date records of all migrant workers. | This data collection is crucial for effective oversight and serves as a foundational element in the formulation of policies to safeguard migrant workers' rights. | .REJECT—<br>Third party data collection will breach da protection and privacy rights of migra workers. Comprehensive record-keepi requirements could violate the Da Protection Act, 2019 and create potential misuse of personal information.<br><br>Additionally, detailed migrant worker da constitutes trade secrets of employme agencies and mandatory disclosure cou undermine legitimate business interests a competitive advantage.<br><br>Existing registration mechanisms provi adequate data for policy formulation witho compromising worker privacy or agen confidentiality. |
| 7 | Ministry of Labour and Social Protection | Delete and introduce provisions on establishment of Office of the | The Office of the Secretary of Labour Migration | REJECT- |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE DETERMINATION |
|---|---|---|---|---|
| | | Secretary of Labour Migration Management. | Management should be the administrator of the Bill and not the Director General under the National Employment Authority Act. | The existing National Employme Authority framework provides adequ administrative capacity. Creating a n office would result in duplication functions and unnecessary administrati costs. The Director General under t National Employment Authority Act h sufficient mandate and resources implement the Bill effectively. |
| 8 | Ministry of Labour and Social Protection | Delete | Already provided for under the Labour Institutions Act. | REJECT – This is a proposed Multi Agency Committ on Vetting of Private Employment Agenc established under Section 8 of the Bill and different from the "Work Perm Committee" under Section 8 of the Labo Institutions Act. . |
| | Ministry of Foreign and Diaspora Affairs, State Department for | Delete the words *"foreign affairs"* in 8 (2) (b). | SDDA is mandated to liaise with the Ministry of Labour and Social Protection in the | REJECT – Foreign affairs remains an integ component of labour migrati |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE DETERMINATION |
|---|---|---|---|---|
| | Diaspora Affairs (SDDA) | | implementation of Labour Migration Policy and the Global Labour Strategy. | management, particularly in negotiati bilateral agreements and managi diplomatic relations with destinati countries. Removing this reference wou limit the comprehensive approach need for effective international labour migrati governance. |
| | ASMAK | Include agency representatives within the committee. | The inclusion of agency representatives will ensure that their perspectives, concerns, and interests are adequately represented and considered in decision-making processes. | REJECT – Including private agency representatives the regulatory committee would crea inherent conflicts of interest a compromise the independence of oversig functions. Regulatory bodies must mainta objectivity and cannot inclu representatives from entities they a mandated to regulate. Industry input can obtained through formal consultati processes without compromising regulato integrity |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE DETERMINATION |
|---|---|---|---|---|
| | ASMAK | Each representative of private agencies shall be entitled to half a vote. | This provision is designed to mitigate potential conflicts of interest. The representative should be either the CEO of the relevant association or a democratically elected delegate. | REJECT-<br>For the same reasons as above. |
| 9 | Ministry of Labour and Social Protection | Delete | Already provided for under the Labour Institutions Act. | REJECT-<br>This Committee and its mandate is r explicitly provided for in the Labc Institutions Act. It is therefore necessa under this Bill.<br>Further, the scope of the Labour Insttitutic Act does not include foreign bas contracts. |
| 10 | Ministry of Labour and Social Protection | Delete | Already provided for under the Labour Institutions Act. | REJECT- |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE DETERMINATION |
|---|---|---|---|---|
| | | | | This Committee and its mandate is r explicitly provided for in the Labc Institutions Act.<br>The scope of the Labour Institutions A does not include foreign based contracts. |
| 11 | Ministry of Labour and Social Protection | Include reporting to the relevant Cabinet Secretary. | The labour attaché reports to the Head of Mission and the relevant Cabinet Secretary. | REJECT—<br>The provision under paragraph (o) incluc a report to the relevant CS. |
| 11 & 12 | SDDA | Include diaspora in the provisions. | The appropriate title is the Cabinet Secretary for Foreign and Diaspora Affairs. | REJECT-<br>The current ministerial structure and tit are adequate for the Bill's implementatic The existing framework under the Minis of Foreign Affairs provides sufficie mandate for diaspora-related functic without requiring specific textu amendments to include diaspc terminology throughout the legislation. |
| 13-28 | Ministry of Labour and Social Protection | Delete | They are covered under the Employment Act, Industrial | REJECT— |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE DETERMINATION |
|---|---|---|---|---|
| | | | Training Act, the Labour Institutions Act and the National Employment Authority Act. | These provisions address specific aspects labour migration that are not adequat covered under existing general employm legislation. Labour migration pres unique challenges requiring specializ regulatory provisions that cannot effectively addressed through bro employment laws. These clauses provi necessary specific protections for migr workers that existing statutes do n contemplate. |
| 13 | COG | Include a provision on establishment of local labour advisory boards within counties. | This is to offer equitable participation across regions. | Establishing county-level labour advis boards would create unnecess bureaucratic layers and potential confli with national labour migration poli Labour migration is primarily international matter requiring centraliz coordination and uniform standar County-level boards could lead inconsistent policies and undermine t |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE DETERMINATION |
|---|---|---|---|---|
| | | | | unified national approach necessary f effective bilateral agreements a international relations. |
| 19 | ASMAK | Remove requirement for demonstrating the existence of a new market. | Not every entity interested in entering this sector is expected to create or identify a new market. Many may seek to operate within established markets. | ACCEPT – Remove new market demonstrati requirement under clause 19 as restricti companies to new markets would discriminatory. |
| 19 | ASMAK | Revise the requirement that directors must possess human resource management experience. | The field of agency operations encompasses diverse competencies that may not necessarily align with traditional HR experience. | ACCEPT – Revise director experience requirements be more flexible. |
| 20 | National Intelligence Service | The security bond under clause 20 should not be transferrable. | | ACCEPT – Non-transferable security bonds ensu direct accountability of the original licens and prevent circumvention of regulat |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE DETERMINATION |
|---|---|---|---|---|
| | | | | oversight through bond transfers. Tl provision protects against agenc transferring bonds to avoid liability wh maintaining regulatory control over w holds security guarantees. Non-transferal bonds ensure that regulatory authorit maintain direct relationship with the ent that provided the original security. |
| 21 | National Intelligence Service | Create a penalty under clause 21 for anyone in contravention of the reasons for cancellation. | Provide for the offence of misleading or false information with regards specifically to acquisition of registration. | ACCEPT – Include penalties for false informati regarding registration. |

**MINUTES OF THE SEVENTY – FOURTH (74TH) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM 7, BUNGE TOWER ON TUESDAY, 12TH NOVEMBER, 2024 AT 10.00 A.M.**

**MEMBERS PRESENT**

| | | |
|---|---|---|
| 1. | Sen. Julius Murgor Recha, CBS, MP | **- Chairperson** |
| 2. | Sen. (Rtd.) Justice Stewart Madzayo, EGH, MP | - Member |
| 3. | Sen. Alexander Munyi Mundigi, MP | - Member |
| 4. | Sen. Crystal Asige, MP | - Member |
| 5. | Sen. Gloria Orwoba, MP | - Member |

**APOLOGIES**

| | | |
|---|---|---|
| 1. | Sen. George Mungai Mbugua, MP | **- Vice-Chairperson** |
| 2. | Sen. Mohamed Mwinyihaji Faki, CBS, MP | - Member |
| 3. | Sen. Erick Okong'o Mogeni, SC, MP | - Member |
| 4. | Sen. Miraj Abdulahi Abdulrahman, MP | - Member |

**SECRETARIAT**

| | | |
|---|---|---|
| 1. | Ms. Mwanate Shaban | - Senior Clerk Assistant |
| 2. | Mr. Reinhardt Choge | - Clerk Assistant |
| 3. | Ms. Marale Sande | - Principal Research Officer |
| 4. | Mr. Jeremy Chabari | - Legal Counsel |
| 5. | Ms. Ndindi Kibathi | - Research Officer |
| 6. | Mr. Frank Mutulu | - Media Relations Officer |
| 7. | Mr. Joseph Otieno | - Audio Officer |
| 8. | Mr. John Pere | - Sergeant-at-Arms |
| 9. | Ms. Swaluha Yusuf | - Public Communications |

**MIN/SEN/SCLSW/452/2024: PRAYERS**

The Chairperson called the meeting to order at 10.24 a.m. followed by a word of prayer.

**MIN/SEN/SCLSW/453/2024: ADOPTION OF AGENDA**

The Agenda was adopted having been proposed by Sen. Alexander Mundigi, MP and seconded by Sen. Crystal Asige, MP as follows –

1. Prayers;
2. Adoption of the Agenda;
3. **Confirmation of Minutes of the 71st, 72nd and 73rd Sitting of the Committee;**
4. **Matters Arising;**
5. **Consideration of public submissions on the Labour Migration Management (No. 2) Bill, 2024 (Senate Bills No. 42 of 2024) (Committee Paper No. 87);**
6. **Consideration of the public submissions of the Sports (Amendment) (No.2) Bill, 2024 (Senate Bills No. 45 of 2024) (Committee Paper No. 86);**
7. Any Other Business; and
8. Adjournment/Date of the Next Meeting.

**MIN/SEN/SCLSW/454/2024 CONFIRMATION OF MINUTES**

The Minutes of the 71st sitting held on Tuesday, 29th October, 2024 at 10.00 a.m. were confirmed to be a true reflection of the proceedings having been proposed by Sen. Crystal Asige, MP and seconded by Sen. Alexander Mundigi, MP.

The Minutes of the 72nd sitting held on Wednesday, 30th October, 2024 at 10.00 a.m. were confirmed to be a true reflection of the proceedings having been proposed by Sen. Alexander Mundigi, MP and seconded by Sen. Crystal Asige, MP.

The consideration of Minutes of the 73rd Sitting was deferred to a later date.

**MIN/SEN/SCLSW/455/2024 MATTERS ARISING;**

There were no matters arising.

**MIN/SEN/SCLSW/456/2024 CONSIDERATION OF PUBLIC SUBMISSIONS ON THE LABOUR MIGRATION MANAGEMENT (NO. 2) BILL, 2024 (SENATE BILLS NO. 42 OF 2024) (COMMITTEE PAPER NO. 87);**

**a) Presentation by the Legal Counsel**

1. The Legal Counsel informed the Committee that public submissions were received from Council of Governors, National Gender and Equality Commission, Ministry of Labour and Social Protection, Ministry of Foreign and Diaspora Affairs, State Department for Diaspora Affairs (SDDA), Association of Skilled Migrants Agencies of Kenya (ASMAK), Kenya National Chamber of Commerce and Industry (KNCCI), Mr. George Chacha and Kwale County Librarians.

2. The above submissions were incorporated in the matrix below -

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE RESOLUTION |
|---|---|---|---|---|
| Long title | Ministry of Labour and Social Protection. | Amend to read—<br>AN ACT of Parliament to provide for the legal framework to regulate and streamline the recruitment of workers within and outside Kenya; safeguard the rights and welfare of job seekers and migrant workers; to establish Migrant Workers Welfare Fund and the Office of the Secretary, Labour Migration Management: and for connected purposes | The long title attempts to regulate private employment agencies and attempts to amend the Labour Institutions Act. | |
| | National Gender and Equality Commission (NGEC). | Delete the word "within" from the long title. | There is already legal framework to regulate recruitment of workers within the country. | |
| 2 | Ministry of Labour and Social Protection. | Delete the definition of "Authority". | The same is already defined under the National Employment Authority Act. | |
| | | Delete the definition of "Committee". | Already provided for under the Labour Institutions Act. | |
| | | Delete definition of "Director General" and substitute with definition of "Secretary of Labour Migration Management". | Director General is already defined under the National Employment Authority Act, | |
| | | Delete definition of "private employment agencies". | They are provided in other statutes. | |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE RESOLUTION |
|---|---|---|---|---|
| 3 | Council of Governors (COG). | Incorporate skills based recruitment to promote ethical and transparent overseas employment. | There is need to prioritise strict skills assessment before deployment. | |
| 4 | Ministry of Labour and Social Protection. | Delete 4 (a) | Catered for in other statutes. | |
| 5 | COG | Include a condition-<br>Deployment shall be contingent upon meeting specific skill and qualifications criteria. | This will provide merit based recruitment. | |
| 6 | Ministry of Labour and Social Protection | Delete and introduce provisions on establishment of Office of the Secretary of Labour Migration Management. | The Office of the Secretary of Labour Migration Management should be the administrator of the Bill and not the Director General under the National Employment Authority Act. | |
| | COG | Insert—<br>(a) Conduct periodic third party audits and merit based performance reviews of its operations under the Act to ensure transparency and effectiveness. | This will strengthen governance within the Authority. | |
| | | | | |
| 7 | Ministry of Labour and Social Protection | Delete and introduce provisions on establishment of Office of the Secretary of Labour Migration Management. | The Office of the Secretary of Labour Migration Management should be the administrator of the Bill and not the Director General under | |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE RESOLUTION |
|---|---|---|---|---|
| | | | the National Employment Authority Act. | |
| 8 | Ministry of Labour and Social Protection | Delete | Already provided for under the Labour Institutions Act. | |
| | Ministry of Foreign and Diaspora Affairs, State Department for Diaspora Affairs (SDDA) | Delete the words "foreign affairs" in 8 (2) (b). | SDDA is mandated to liaise with the Ministry of Labour and Social Protection in the implementation of Labour Migration Policy and the Global Labour Strategy. | |
| 9 | Ministry of Labour and Social Protection | Delete | Already provided for under the Labour Institutions Act. | |
| 10 | Ministry of Labour and Social Protection | Delete | Already provided for under the Labour Institutions Act. | |
| 11 | Ministry of Labour and Social Protection | Include reporting to the relevant Cabinet Secretary. | The labour attaché reports to the Head of Mission and the relevant Cabinet Secretary. | |
| 11 & 12 | SDDA | Include diaspora in the provisions. | The appropriate title is the Cabinet Secretary for Foreign and Diaspora Affairs. | |
| 13-28 | Ministry of Labour and Social Protection | Delete | They are covered under the Employment Act, Industrial Training Act, the Labour Institutions Act and the National Employment Authority Act. | |
| 13 | COG | Include a provision on establishment of local labour advisory boards within counties. | This is to offer equitable participation across regions. | |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE RESOLUTION |
|---|---|---|---|---|
| 26 | NGEC | Replace "may" with "shall". | It should be mandatory to develop a code of conduct to cure cases of misconduct. | |
| 28 | COG | Introduce provision of tiered orientation programs tailored to different skill levels. | This is to make training relevant and effective. | |
| 30 | COG | Introduce independent oversight during contract negotiation. | This is to ensure merit and integrity in the process. | |
| 34 | NGEC | (1) In 34 (1) registration should be discretionary and not mandatory.<br>(2) Delete sub clauses (4) and (5). | Registration should be voluntary and mandatory for those who wish to be protected by the government.<br><br>It might be difficult to implement 34 (5) | |
| 38 | COG | Include counties in appointment of inspectors where necessary.<br><br>Expand inspector's role to include performance based oversight. | This is in support of devolution and for effective implementation of the Bill. | |
| 42 | NGEC | Repatriation of remains of deceased worker should not be the work of the agency or the employer. | A welfare fund should be established on the same.<br>Agencies may close or be deregistered. | |
| 43 | NGEC | Replace "may" with "shall". | This should be mandatory. | |
| 39-41 | Ministry of Labour and Social Protection. | Delete | This is covered under other labour laws. | |
| 44 & 46 | Ministry of Labour and Social Protection | Delete | The Bill is on labour migration and not regulation of private employment agencies. | |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE RESOLUTION |
|---|---|---|---|---|
| 49-51 | Ministry of Labour and Social Protection | Delete | This is covered under other labour laws. | |
| | | **NEW CLAUSES** | | |
| | SDDA | Include new provisions on Diaspora Placement Agency. The functions of the Diaspora Placement Agency shall be to—<br>(a) position Kenya as a leading labour market brand globally;<br>(b) introduce and market Kenya's talent to foreign employers and markets;<br>(c) provide information on Kenya's labour demographics;<br>(d) negotiate with foreign employers for placement of Kenyan;<br>(e) seek job opportunities globally;<br>(f) provide a database on available skills;<br>(g) offer information on foreign labour markets;<br>(h) facilitate pre-migration training in preparation for foreign employment;<br>(i) facilitate preparation for documents and visa interviews;<br>(j) provide a system for workers' registry;<br>(k) publicise available resources; and<br>(l) monitor global markets and conduct market research. | DPA plays a vital role in positioning Kenya as a leading labour market brand, marketing Kenyan talent to foreign employers and providing detailed information on labour demographics. | |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE RESOLUTION |
|---|---|---|---|---|
| | | Introduce clauses on diaspora attaché in each Kenyan Mission. They are to—<br>(a) offer support and advocacy for migrant workers in host country;<br>(b) promote employment of Kenyans in host country;<br>(c) monitor work conditions of migrant workers;<br>(d) promote implementation of BLAs between Kenya and host nation;<br>(e) coordinate repatriation and support for workers in distress. | This is in line with the Bill. | |
| | NGEC | Provide for a Migrant Workers Welfare Fund. | This to cater for the welfare of migrant workers. | |

3. The Committee noted the differences in opinions between the Ministry of Labour and Social Protection and the National Employment Authority, and resolved to hold off consideration of the matrix until a middle ground is found between the Ministry of Labour and Social Protection and the National Employment Authority.

**MIN/SEN/SCLSW/457/2024** **CONSIDERATION OF PUBLIC SUBMISSIONS ON THE SPORTS (AMENDMENT) (NO.2) BILL, 2024 (SENATE BILLS NO. 45 OF 2024) (COMMITTEE PAPER NO. 86);**

**a) Presentation by the Legal Counsel**

1. The Legal Counsel informed the Committee that public submissions on the Bill were received from Ministry of Youth Affairs, Creative Economy and Sports, Council of Governors, Syombua A. Kibue, Founder and CEO of SKEIYA, Lawrence Mbaria Mbuthia, Chaka Bora, Sports Caucus and Richard Onsongo Nyang'au, President, SS, ASSAD FC.

2. The Submissions were captured in the matrix below –

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE RESOLUTION |
|---|---|---|---|---|
| 3 | Council of Governors (CoG) | Delete paragraph (a) | The proposals assign National government functions of county governments. Sports facilities and activities are functions of county governments under the Constitution. | |
| PART IVA | COG | Delete the entire proposed Part IVA | (a) County governments are already carrying out the objectives of the proposed county academies.<br>(b) Existing structures and frameworks within county governments are sufficient to achieve the objectives of the Bill.<br>(c) Counties have fully developed departments to deal with sports. | |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE RESOLUTION |
|---|---|---|---|---|
| | | | (d) Creation of new committees will lead to more financial burdens.<br>(e) More capacity building efforts should be promoted to strengthen the existing sports structures and frameworks within the counties.<br>(f) Counties should be given more funding for sports. | |
| 38C | Sports Caucus | The persons representing county sports associations and national sports associations should be from different sports. | | |
| | | | | |

3. The Committee made the following observations –

   a) That the Sport functions is yet to be unbundled to the Counties;

   b) That there is no policy currently guiding the Sporting sector;

   c) That Counties do not receive any money from the Sports, Arts and Social Development Fund;

   d) That the Council of Governors was not in support of the Bill;

4. The Committee resolved to hold a meeting with the Ministry of Youth Affairs, Creative Economy and Sports, the Council of Governors and the Intergovernmental Relations Technical Committee to kick start the process of unbundling the Sport function, and creating a framework in terms of policy to guide the sector.

5. The Committee resolved hold a retreat to consider the Bill and invite the Sponsors to discuss the matters raised.

**MIN/SEN/SCLSW/458/2024 ANY OTHER BUSINESS**

There was no other business.

**MIN/SEN/SCLSW/459/2024 ADJOURNMENT AND DATE OF THE NEXT MEETING**

The meeting was adjourned at 11.56 a.m.

**SIGNED**.....**DATE** Tuesday, 26th November, 2024

**CHAIRPERSON: SEN. JULIUS MURGOR RECHA, CBS, MP**
**STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE**

**MINUTES OF THE SIXTY – SECOND (62ND) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM 2, BUNGE TOWER ON THURSDAY, 24TH OCTOBER, 2024 AT 10.00 A.M.**

**MEMBERS PRESENT**

1. Sen. Julius Murgor Recha, CBS, MP - **Chairperson**
2. Sen. George Mungai Mbugua, MP - **Vice-Chairperson**
3. Sen. (Rtd.) Justice Stewart Madzayo, EGH, MP - Member
4. Sen. Alexander Munyi Mundigi, MP - Member
5. Sen. Miraj Abdulahi Abdulrahman, MP - Member
6. Sen. Crystal Asige, MP - Member
7. Sen. Gloria Orwoba, MP - Member

**APOLOGIES**

1. Sen. Mohamed Mwinyihaji Faki, CBS, MP - Member
2. Sen. Erick Okong'o Mogeni, SC, MP - Member

**SECRETARIAT**

1. Mr. Reinhardt Choge - Clerk Assistant
2. Mr. Jeremy Chabari - Legal Counsel
3. Mr. Malcolm Ngugi - Legal Counsel
4. Ms. Ndindi Kibathi - Research Officer
5. Mr. Jack Lemeteki - Media Relations Officer
6. Ms. Joy Kyallo - Fiscal Analyst
7. Mr. Joseph Otieno - Audio Officer
8. Mr. John Pere - Sergeant at Arms
9. Ms. Daphne Wambugu - Intern

**IN - ATTENDANCE**

1. Dr. Alfred Mutua, EGH - CS, Ministry of Labour and Social Protection
2. Ms. Roseline Njogu - PS, State Department for Diaspora Affairs
3. Ms. Edith Okoki - DG, National Employment Authority
4. Mr. James Mwenda - Chief State Counsel, Ministry of Labour and Social Protection
5. Mr. Festus Mutuse - Ag. Director, Strategy and Quality, Ministry of Labour

and Social Protection

| | | |
|---|---|---|
| 6. | Mr. Dick Safari | - Director Legal, State Department of Diaspora Affairs |
| 7. | Ms. Irene Karai | - Director, State Department of Diaspora Affairs |
| 8. | Mr. Glenns Etyang | - Deputy Director, State Department of Diaspora Affairs |
| 9. | Mr. Gerald Omoke | - Principal Legal Officer, State Dept of Diaspora Affairs |
| 10. | Ms. Phyllis Githua | - PPCO, State Department of Diaspora Affairs |
| 11. | Ms. Nancy Wanjala | - Legal Officer, National Employment Authority |
| 12. | Mr. Kiplimo Kigen | - Legal Counsel, Kenya National Chamber of Commerce and Industry |
| 13. | Mr. Francis Wahome | - Chairman, Association of Skilled Migrant Workers of Kenya |
| 14. | Mr. Mwaura | - Advocate, Association of Skilled Migrant Workers of Kenya |

**MIN/SEN/SCLSW/372/2024: PRAYERS**

The Chairperson called the meeting to order at 10.29 am followed by a word of prayer.

**MIN/SEN/SCLSW/373/2024: ADOPTION OF AGENDA**

The Agenda was adopted having been proposed by Sen. Miraj Abdulrahman, MP and seconded by Sen. Alexander Mundigi, MP as follows –

1. Prayers;
2. Adoption of the Agenda;
3. **Public Hearing and Stakeholder engagement on the Labour Migration Management (No.2) Bill, 2024 (Senate Bills No. 42 of 2024) (Committee Paper No. 81);**
4. Any Other Business; and
5. Adjournment/Date of the Next Meeting.

**MIN/SEN/SCLSW/374/2024 PUBLIC HEARING AND STAKEHOLDER ENGAGEMENT ON THE LABOUR MIGRATION MANAGEMENT (NO.2) BILL, 2024 (SENATE BILLS NO. 42 0F 2024) (COMMITTEE PAPER NO. 81);**

The Chairperson welcomed the Stakeholders to the Public hearing followed by a round of introductions.

**a) Presentation by the Cabinet Secretary, Ministry of Labour and Social Protection**

1. The Cabinet Secretary noted that the Bill would solve a myriad of the migrant workers issues and added that currently the only setback to the existing laws was the proper implementation of the existing laws by relevant institutions to tame the existing recruitment agencies;

2. The Cabinet Secretary proposed the following as amendments as listed in their submission;
   a) A change to the long title;
   b) Deletion of the expression "authority";
   c) Delete the expression "committee";
   d) Delete paragraph (a) in Clause 4;
   e) Deletion of Clause 6 & 7 and substitute with new clauses defining the "Office of Secretary of Labour Migration Management" the functions of the Secretary, powers of the Secretary and appointment of officers and other staff;
   f) Delete Clauses 8, 9 and 10 as the problem is implementation of existing laws;
   g) On Clause 11(5), an addition of the word "Cabinet Secretary" after the words "head of mission";
   h) Deletion of Clauses 13, 14, 16, 17, 18, 19, 20, 21, 22, and 23; and
   i) On Clauses 30, 35 and 36, delete the word "Authority" and substitute with the word "Secretary".

**b) Presentation by Principal Secretary, State Department for Diaspora Affairs**

1. The PS begun by supporting the Bill and stated that it will protect migrant workers right whilst providing better access to data on migrant workers;
2. She added that mandatory contribution to the Migrant Workers Fund may put a strain on the migrant workers considering the amounts of money they use to pay agencies to get jobs;
3. She also stated that specific benefits from the Migrant Workers' Fund need to be well articulated in the Act to enable migrant workers know what their benefits are and the extent to which the Fund may assist them, and went ahead to propose the following amendments -
   i. The Bill requires the use of gender-neutral language especially the removal of the words 'his representative' to 'their representative'; and
   ii. Change from the State Department of Foreign Affairs to the State Department of Diaspora Affairs.

**c) Presentation by the Kenya National Chamber of Commerce and Industry**

The Kenya National Chamber of Commerce presented the following as proposed amendments -

i. License periods require a change from 12 months to 24 months to enable the agencies to be able to make the most of the time they have as license renewal takes a long time;
ii. The timelines given to approvals need to be set out clearly in the Bill since as it sits, it is a gray area which may affect the ease of doing business; and
iii. A concern over the inclusion of Non-Governmental Organisations as private employment agencies whilst they do not pay taxes nor register as employment agencies.

**d) Presentation by the Association of Skilled Migrant Agencies of Kenya (ASMAK)**

ASMAK presented as follows -

i. The Bill speaks on private employment agencies whilst a majority of Kenya's agencies aren't employment but recruitment agencies;
ii. It does not cover absconding at work whilst in foreign countries;
iii. Timelines on processing are not addressed therefore this should be taken care of;
iv. It does not talk of the financial conflict nor calamities borne by recruitment agencies;
v. It is important to include a grace period as license renewal takes a considerable amount of time; and
vi. There needs to be an exception on pre-departure training as migrant workers returning to some foreign countries already have prior experience and therefore do not require the pre-departure training.

**e) Committee Interjections**

The Committee raised the listed concerns –

1) The role and mandate of the National Employment Authority in regulating the recruitment and employment agencies, and hand over its roles to the line Ministry;
2) Whether the multi-agency vetting committee be abolished and its role be taken over by the Directorate of Criminal Investigations, the National Intelligence Service or the Office of the Attorney General;
3) The Members sought to know the main challenge in implementing existing laws and whether NEA has a database of the number of persons recruited and their details;
4) The Committee noted that although people search for jobs on the National Employment Authority website, they prefer to pay agencies to get guaranteed jobs as the jobs on the NEA website provide a lot of hurdles for individuals who are not tech savvy nor have access to computers or mobile phones with capabilities of accessing the internet to upload all required documents in the specified formats;
5) Raised concerns whether extending the license period to two years will embolden the rogue agencies to defraud more Kenyans knowing that they have 24 months to operate before renewal;
6) The Committee also noted the duplicity of roles between the National Employment Authority and the Diaspora Placement Agency? and
7) The Members also wanted to know the role and involvement of counties in labour migration.

**f) Responses**

1. The Principal Secretary, State Department for Diaspora Affairs responded to the issues raised above as follows -
   i. Replacing the multi-agency committee with the intelligence or criminal investigative department would be tantamount to categorizing the employment and recruitment agencies as criminals, however this can be cured by formation of a special unit to deal with labour migration matters/fraud;
   ii. There is no duplicity between the National Employment Authority and the Diaspora Protection Agency. The Diaspora Placement Agency was formed to ensure that money is not left on the table when foreign governments prefer to deal with government and not private agencies; and
   iii. Shorter licenses may be harmful to the agencies, but a workaround to avoid them turning rogue is to implement reporting mechanism to ensure that the agencies adhere to set out standards, this informed by the policies used in other countries well known for exporting labour and where existing policies are working such as the Philippines.

2. National Employment Authority responded as follows –

   i. The recruitment agencies provide returns to the National Employment Authority on the number of people they take abroad; and
   ii. The Authority has only just started properly functioning within the past twelve months since its inception and had so far formulated methods of dealing and preventing rogue agencies from taking advantage of Kenyans, however they still require some more time to completely deal with rogue agencies.

3. The Kenya National Chamber of Commerce and Industry responded that the reason for proposing the change from 12 to 14 months on the licensing period is because as approvals take a while to be gotten this then would prevent the agencies from attaining profits since they would have shorter operating periods with the lack of a grace period once their licenses expire.

**g) Way forward**

The National Employment Authority should consider development of a USSD platform that can be used by individuals without possession of a smart phone to access jobs. This ought to be augmented by the government ring fencing jobs that it sources in foreign countries to ensure that private recruitment agencies do not take advantage of migrating workers.

**MIN/SEN/SCLSW/375/2024** **ANY OTHER BUSINESS**

There was no other business.

**MIN/SEN/SCLSW/376/2024** **ADJOURNMENT AND DATE OF THE NEXT MEETING**

The meeting was adjourned at 12.26 pm.

**SIGNED**.....**DATE** Sunday, 27th October, 2024

**CHAIRPERSON: SEN. JULIUS MURGOR RECHA, CBS, MP**
**STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE**

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 147 (Senate Bills No. 42)*

REPUBLIC OF KENYA

# *KENYA GAZETTE SUPPLEMENT*

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**NAIROBI, 26th July, 2024**

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**SCHEDULE**

# THE LABOUR MIGRATION MANAGEMENT (No. 2) BILL, 2024

**A Bill for**

**AN ACT of Parliament to provide for the regulation of private employment agencies and the recruitment of workers within and outside Kenya; safeguard the rights and welfare of job seekers and migrant workers; and for connected purposes**

**ENACTED** by the Parliament of Kenya, as follows —

## PART I — PRELIMINARY

Short title.

1. This Act may be cited as the Labour Migration Management (No. 2) Act, 2024.

Interpretation.

2. In this Act—

Cap 227.

"Authority" means the National Employment Authority established under section 6 of the National Employment Authority Act;

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to labour;

"Committee" means the Multi Agency Committee on Vetting of Private Employment Agencies established under section 8;

Cap 234.

"Commissioner for labour" means the Commissioner for Labour appointed under section 30 of the Labour Institutions Act;

"county executive committee member" means the county executive committee member responsible for matters relating to labour and social welfare in a county;

"Director-General" means the Director General of the Authority appointed under section 17 of the National Employment Authority Act;

Cap 226.

"employer" has the meaning assigned to it in the Employment Act;

"foreign employment" means the employment of a Kenyan citizen in a country other than Kenya;

"job order" means instructions issued by an employer to a private employment agency to recruit employees on

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behalf of the employer and contains information on the job openings the employer seeks to fill and the expected terms and conditions of employment;

"job seeker" has the meaning assigned to it under section 2 of the National Employment Authority Act;

"Labour Attaché" means a public officer deployed to a Kenya Mission for labour and employment duties under section 10;

"labour officer" means a labour officer appointed under section 30 (2) of the Labour Institutions Act; Cap 234.

"labour migration" means the departure of a Kenyan citizen from Kenya for the purpose of employment in any foreign country;

"migrant worker" means a Kenyan citizen who—

(a) intends to migrate for work;

(b) is departing to any foreign country for work; or

(c) is employed in any foreign country.

"Mission" has the meaning assigned to it under section 2 of the Foreign Service Act,; Cap 185E.

"National Industrial Training Authority" means National Industrial Training Authority established under section 3 of the Industrial Training Act; Cap 237.

"pre-departure orientation" means a programme which equips a migrant worker with knowledge, skills and attitude required to facilitate the integration of the migrant worker in a foreign country; and

"private employment agency" means a company, independent of the Government, which provides one or more of the following labour market services—

(a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationship which may arise therefrom; or

(b) services consisting of employing workers with a view to making them available to a third party which assigns their tasks and supervises the execution of the tasks.

Object of the Act.

3. The object of this Act is to —

(a) promote safe, fair, ethical and orderly recruitment of workers;

(b) protect the rights of job seekers;

(c) enhance co-ordination of labour migration governance in the Kenya;

(d) enhance transparency and flexibility in labour migration;

(e) promote overseas employment;

(f) protect the human and labour rights and promote the welfare of Kenyan migrant workers;

(g) maximize participation of Kenya migrant workers in the economic development;

(h) promote equal treatment of foreigners' migrant workers in Kenya who are lawfully engaged in employment;

(i) provide a framework for collection, analysis and use of data and information on labour migration and labour migrants; and

(j) promote opportunities for employment.

Application of the Act.

4. This Act shall apply to—

(a) private employment agencies;

(b) the recruitment of Kenyan citizens for employment in Kenya to a foreign country; and

(c) migrant workers.

Conditions for deployment of migrant workers.

5. (1) The government shall deploy migrant workers to countries where the rights of migrant workers are protected.

(2) The government shall recognise the following measures as a guarantee by the receiving country for the protection and the rights of migrant workers—

(a) existing labor and social laws protecting the rights of migrant workers;

(b) signatory to multilateral conventions, declarations or resolutions relating to the protection of migrant workers; or

(c) existing bilateral agreement or arrangement with the government protecting the rights of migrant workers.

## PART II— ADMINISTRATION

Functions of the Authority.

6. (1) The functions of the Authority under this Act shall be to—

(a) register and regulate private employment agencies;

(b) develop pre-departure programmes for migrant workers;

(c) monitor the implementation of the pre-departure orientation programmes;

(d) identify and create awareness on 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, analyse and disseminate data on foreign employment;

(g) develop and implement programmes necessary to safeguard the rights and welfare of migrant workers; develop and implement a return and reintegration programme for migrant workers;

(h) receive and investigate complaints from migrant workers, job seekers, private employment agencies or any person; and

(i) create public awareness on safe, regular and orderly labour migration.

(2) The Authority shall engage county governments and establish county offices in performance of its functions.

Powers of the Authority.

7. The Authority shall, in the performance of its functions under this Act, have the power to—

(a) summon witnesses and require them to—

(i) give evidence, orally or in writing, on oath or on affirmation; and

(ii) produce any evidence or exhibits that the Authority considers necessary;

(b) co-operate and collaborate with other public entities, agencies, any foreign governments, regional and international organizations in the enforcement of this Act;

(c) obtain professional assistance or advice from any person or organization, whether within or outside the public service, as it considers appropriate; and

(d) facilitate alternative forms of dispute resolution in disputes arising from this Act.

Establishment of a Multi-Agency Committee on the vetting of Private Employment Agencies.

8. (1) There is established a Multi-Agency Committee on Vetting of Private Employment Agencies.

(2) The Committee shall consist of—

(a) the Principal Secretary responsible for matters relating to labour 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.

(3) The Principal Secretary responsible for labour or his or her representative shall be the chairperson of the Committee.

(4) The Director–General shall be the Secretary to the Committee and shall have no voting rights.

(5) The Authority shall be the secretariat to the Committee.

(6) The Committee may invite any public officer or other person or any representative of any body, who in the opinion of the Committee, has expert knowledge in matters relating to the functions of the Committee to attend any meeting of the Committee and participate in the proceedings.

(7) A person who attends a meeting under sub section (6) may, if invited, participate in any discussion at the meeting but shall not vote.

Functions of the Committee.

9. The Committee shall be responsible for vetting and approving applications for registration made by private employment agencies.

Reports by the Committee.

10. (1) The Committee shall submit an annual report to the Cabinet Secretary within three months after the end of every financial year.

(2) The report under subsection (1) shall contain—

(a) the activities undertaken by the Committee during the year;

(b) the status of compliance to the registration requirements by private employment agencies; and

(c) any other relevant matter.

(3) Upon receiving the annual report under subsection (1), the Cabinet Secretary may make such recommendations to the Committee as he or she may consider necessary.

(4) Despite subsection (1), the Cabinet Secretary may, at any time, request for information from the Committee on any matter

Labour attachés.

11. (1) The Cabinet Secretary shall deploy a labour attaché to serve in each Kenya Mission.

(2) The Cabinet Secretary shall consult the Cabinet Secretary responsible for matters relating to foreign affairs before deploying a labour attaché to a Kenya Mission.

(3) The functions of a labour attaché deployed to a foreign country shall be to—

(a) seek employment opportunities for Kenyans in his or her host country;

(b) authenticate job orders;

(c) vet destination employment conditions;

(d) attend to complaints relating to migrant workers in that country;

(e) visit workplaces and workers' accommodation facilities to assess working and living conditions;

(f) monitor the implementation of Bilateral Labour Agreements;

(g) monitor the welfare of migrant workers and promote awareness of their rights to minimize on violation of their rights;

(h) collect and collate labour migration data and statistics on Kenyan migrant workers in that country;

(i) provide labour market information to migrant workers;

(j) analyze and advise the Cabinet Secretary on the demand for foreign labour in the respective country;

(k) attest foreign contracts of employment;

(l) monitor situations and labour policy developments in the host country that may affect migrant workers;

(m) facilitate the provision of counselling services to migrant workers;

(n) supervise and co–ordinate the operations of safe houses for migrant workers in that country;

(o) submit to the Cabinet Secretary an annual report and recommendations relating to the conditions of migrant workers working in that country; and

(p) perform any other function as may, from time to time, be assigned by the Cabinet Secretary.

(4) The report prepared under subsection (3) (o) shall contain the following information—

(a) a list of migrant workers, with names of trades and professions they are employed in, their working conditions, benefits and challenges, if any;

(b) a list of cases brought against migrant workers, if any, and details thereof, and information about workers detained or convicted of any offence;

(c) a list of the migrant workers in distress, the nature of distress and any assistance or services offered by the Kenya mission or the steps taken to resolve the problems of migrant workers, including counselling and legal assistance;

(d) an estimate of the job opportunities for migrant workers in the respective country;

(e) the status of the implementation of any existing bilateral agreement regarding the rights of migrant workers in the respective country; and

(f) any other matter as may be specified by the Cabinet Secretary from time to time.

(5) A labour attaché shall, in the performance of his or her duties, be responsible to the head of Mission.

Duties of the Cabinet Secretary for Foreign Affairs.

12. (1) The Cabinet Secretary responsible for matters relating to foreign affairs shall put in place mechanisms to safeguard the welfare of migrant workers including —

(a) developing and implementing strategies for migrant workers to participate in the development process;

(b) developing measures to enhance the safety and security of migrant workers;

(c) developing and implementing mechanisms for engagement with migrant workers; and

(d) establishing an administrative and institutional framework for the coordination of matters relating to migrant workers.

(2) The Cabinet Secretary responsible for matters relating to foreign affairs shall, for the effective implementation of subsection (1), —

(a) facilitate information sharing as a means of ensuring continuous engagement between the national and county governments and migrant workers;

(b) develop policies to incentivize the participation of migrant workers in the economic development, governance and democratic processes in Kenya;

(c) establish a collaborative framework with migrant workers to promote Kenya as an investment destination;

(d) in consultation with other relevant state agencies, put in place fiscal and non-fiscal measures to promote investment, in Kenya, by migrant workers;

(e) in consultation with the relevant State agencies, put in place measures for the protection of migrant workers including access to legal representation, adequate healthcare services and access to basic services during a pandemic or other emergency in the country of residence; Cap 216A.

(f) develop and regularly update an integrated database on migrant workers and in particular document the expertise and skills of migrant workers;

(g) liaise with the relevant Cabinet Secretary to facilitate the timely issuance and renewal of passports and the processing of any documents required to be issued by the national government to migrant workers;

(h) develop a framework for the reintegration of returnees upon arrival in Kenya; and

(i) nominate recipients of national honours under the National Honours Act.

Role of county governments.

13. A County government shall—

(a) issue county operating licences to private employment agencies;

(b) in collaboration with the National Employment Authority, establish a database of migrant workers from specific counties;

(c) develop policies and programmes offering incentives to migrant workers from specific counties to invest in;

(d) publicise, in consultation with the National Employment Authority and private employment agencies, job vacancies for Kenyan workers outside the country;

(e) develop county specific investment programmes for migrant workers; and

(f) facilitate, in collaboration with the national government, the reintegration of returning migrant workers back to counties of origin.

Application for a county operating licence.

14. (1) A person who intends to operate a private employment agency shall submit an application for a private employment agency county operating licence to the respective county executive committee member.

(2) An application for a private employment agency county operating licence shall be in the prescribed form and shall be submitted together with—

(a) the prescribed application fee;

(b) the certificate of registration; and

(c) any other information which may be prescribed in the regulations under this Act.

(3) The county executive committee member shall keep and maintain a register in which shall be recorded all applications made and licences issued under this Act.

(4) The county executive committee member shall, within fourteen days of receipt of an application under this section, consider the application and may—

(a) where the applicant meets the requirements of this Act, approve the application and issue a licence to the applicant;

(b) approve the application subject to such conditions as the county executive member may impose; or

(c) reject the application.

(5) The county executive committee member shall notify the applicant in writing of any decision made under subsection (1) within seven days of the decision being made with reasons therefor where applicable.

(6) A person aggrieved by the decision of the county executive committee member under this Act may apply to a court of law for review of the decision within fourteen days from the date of the decision.

(7) A county operating licence shall be renewed annually.

(8) A person shall not operate a private employment agency without a county operating licence.

(9) A person who operates a private employment agency without a county operating licence commits an offence.

Migrant workers portal.

15. (1) The Authority shall establish a migrant workers online portal.

(2) The migrant workers online portal shall—

(a) facilitate the registration of private employment agencies;

(b) facilitate the registration of migrant workers;

(c) provide details of all registered private employment agencies;

(d) provide a platform for interaction between the migrant workers and the National and county governments, private institutions, investors, and other relevant institutions;

(e) provide access to finance, information, innovation, and investments for the migrant workers;

(f) provide information on job opportunities outside the country;

(g) provide information on clearances, approvals and registration requirements for migrant workers;

(h) receive complaints and recommendations from migrant workers, industry stakeholders and the general public; and

(i) serve as a gateway to all migrant workers' services by the national and county governments.

## PART III—PRIVATE EMPLOYMENT AGENCIES

Registration of a private employment agency.

16. (1) A private employment agency shall be registered under this Act.

(2) A person shall not operate a private employment agency unless the person is registered under this Act.

(3) A person who contravenes sub section (2) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years, or to both.

Application for registration.

17. (1) A person who intends to register a private employment agency shall apply to the Director-General for registration in the manner prescribed in regulations.

(2) Upon receipt of the application made under sub section (1), the Director-General shall submit the application to the Committee for vetting and approval.

(3) The Committee may, while assessing an application made under this section—

(a) summon and interview the directors of a private employment agency; and

(b) conduct any necessary investigations with regard to the application for registration.

(4) After assessing the application for registration, the Committee shall—

(a) if satisfied that the application for registration complies with the requirements of this Act relating to registration, approve the application and direct the Director-General to issue a certificate of registration in the prescribed form; or

(b) where the application does not comply with the requirements of this Act relating to registration, reject the application and require the Director-General to communicate such rejection to the applicant in writing, giving reasons for the rejection.

(5) Despite subsection (4) (a), in the case of a private employment agency engaged in the recruitment of workers for foreign employment, a certificate of registration shall not be issued if the applicant has not executed the security bond specified in section 20.

(6) A registered private employment agency shall display its certificate of registration in a conspicuous place at the premises where the business is carried on.

(7) A certificate of registration issued under this section is not transferable.

(8) A certificate of registration shall, unless cancelled earlier, be valid for a period of one year from the date of issuance.

(9) A private employment agency may apply for renewal of the certificate upon expiry of the certificate.

Conditions for registration of private employment agencies.

18. (1) A private employment agency applying for registration shall provide the Authority with proof of—

(a) registration in Kenya as a—

(i) company under the Companies Act; or Cap 486.

(ii) partnership firm under the Partnerships Act; or Cap 29.

(iii) limited liability partnership under the Limited Liability Partnership Act; or Cap 30.

(iv) non-governmental organization under the Non-Governmental Organizations Co-ordination Act; Cap 134.

(b) a county operating licence;

(c) financial capacity as prescribed by the Authority;

(d) existence of new market;

(e) experience in human resource management; and

(f) a duly notarised undertaking for liability for claims or damages for its commissions and omissions.

(2) A private employment agency shall not be registered if—

(a) it does not meet the requirements for registration prescribed in this Act and regulations;

(b) it provides, in the application, information which is false or incorrect;

(c) there is continued non-compliance with the Act by the applicant;

(d) it or any of its directors have been convicted of human trafficking or human smuggling; or

(e) it is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six of the Constitution.

Security bond.

19. (1) Every private employment agency that is engaged in the recruitment of workers for foreign employment shall, upon receiving a notification of approval and notification of payment from the Director-General, execute a security bond as prescribed by the Cabinet Secretary with a bank or an insurance company registered and licensed in Kenya.

(2) The security bond under sub section (1) shall be—

(a) valid for a period of one year and shall run concurrently with the validity period of the certificate of registration; and

(b) used for the purpose of repatriation and other entitlements in the event of default by the private employment agency or the employer.

(3) The security bond shall not be sourced from the capital of the private employment agency.

Cancellation of registration.

20. (1) The Authority may cancel the certificate of registration of a private employment agency if—

(a) any information given by the private employment agency is false or misleading;

(b) the holder of the certificate of registration fails to comply with any requirement of this Act;

(c) the private employment agency fails to file periodic returns;

(d) the private employment agency violates any condition of the certificate of registration;

(e) the private employment agency fails to comply with any direction or order issued by the Authority under this Act; or

(f) registration was fraudulently acquired.

(2) The Cabinet Secretary may, by notice in the *Gazette* prescribe other grounds for cancellation of registration.

(3) The Committee shall, when cancelling the registration of a private employment agency, be guided by the provisions of the Fair Administrative Action Act. Cap 7L.

Register of private employment agencies.

21. (1) The Director-General shall keep and maintain an up to date register of private employment agencies.

(2) The register shall be a public document and available for inspection by any person.

(3) The register under sub section (1) may be in electronic form.

Branches.

22. (1) A registered private employment agency that seeks to open a branch shall apply to the Authority for registration of the branch in the manner prescribed in regulations.

(2) The Authority shall upon receipt of the application, cause the premises to be inspected and shall—

(a) if satisfied that the proposed branch meets the requirements of this Act and regulations issue a licence; or

(b) where the applicant does not meet the requirements for registration, reject the application and communicate the rejection to the applicant in writing, giving reasons for the rejection.

Change of office.

23. (1) A private employment agency that seeks to change its registered office or branch office shall apply to the Authority for change of office in the manner prescribed in regulations.

(2) The Authority shall upon receipt of the application, cause the premises to be inspected and shall—

(a) if satisfied that the new office or a branch office meets the requirements of this Act and regulations issue a licence; or

(b) where the new office or a branch office does not meet requirements of this Act and regulations, reject the application and communicate the rejection to the applicant in writing, giving reasons for the rejection.

Approval of job orders.

24. (1) A private employment agency shall submit every job order to the Authority for approval.

(2) A job order for foreign employment shall be attested by the relevant Kenya mission and thereafter submitted by the private employment agency to the Authority for approval.

(3) The Authority shall not approve a job order unless the terms and conditions of employment are compatible with the minimum Kenyan statutory requirements.

Advertisement of jobs by private employment agencies.

25. (1) A private employment agency shall not issue any advertisement calling for applications for employment unless—

(a) the Authority has approved the advertisement; and

(b) the advertisement is in the manner prescribed in regulations.

(2) The Authority may, if satisfied that the proposed advertisement or notification calling for applications for employment complies with this Act and regulations, approve the issuance of the advertisement or notification.

(3) The Authority may refuse to grant approval under this section if it is satisfied that—

(a) the nature of employment for which persons are to be recruited is degrading or inhuman;

(b) the terms and conditions offered to the workers are not satisfactory;

(c) the lives of workers would be endangered by reason of civil war or political disturbances in the country in which they are to be employed;

(d) the health and safety of the workers would be endangered; or

(e) the requirements prescribed in regulations have not been complied with.

(4) A private employment agency which has obtained approval under this section may advertise job vacancies within their premises, a public office or through the media.

(5) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine not

exceeding five hundred thousand shillings or imprisonment for a term not exceeding one year or to both.

Code of conduct for private employment agencies.

26. The Authority may prescribe a code of conduct for private employment agencies.

Obligations of private employment agencies.

27. (1) A private employment agency shall—

(a) keep and maintain an up to date register of recruited workers and provide this to the Authority 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 memoranda of understanding between Kenya and the countries of destination;

(d) keep and maintain any record which, by regulations made under this Act, is required to be kept for a period of three years subsequent to the occurrence of the event recorded;

(e) notify the Authority of any migrant worker who is in distress;

(f) inform the Authority 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.

(2) A private employment agency shall not charge or receive in respect of anything done or to be done at an employment agency—

(a) any fee or other payment or reward at a rate higher than that which may, from time to time, be prescribed for any particular area or class of business; or

(b) any fee, payment or reward, unless provision has been made for the charging of such fee, payment or reward in regulations made under this Act.

(3) A person who contravenes subsection (1) or (2) commits an offence and shall upon conviction be liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding two years or to both such fine and imprisonment.

## PART IV— PRE-DEPARTURE PROCEDURE FOR FOREIGN EMPLOYMENT

Pre-departure orientation.

28. (1) A person who desires to travel to another country for purposes of foreign employment shall undertake pre-departure orientation.

(2) The Cabinet Secretary may prescribe the categories of employees who shall undertake pre-departure orientation.

The National Industrial Training Authority role in pre-departure training.

29. The National Industrial Training Authority established under section 3 of the Industrial Training Act shall in conjunction with the Authority and other labour industry players develop curricula on, among others—

(a) contract management;

(b) the 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.

Foreign contracts of employment.

30. (1) Where an employer who is not resident in Kenya or a private employment agency intends to recruit a migrant worker for foreign employment, the employer or the private employment agency shall arrange for the conclusion of a contract of employment between the employer and the migrant worker before departure from Kenya.

(2) A foreign contract of employment shall be—

(a) in the prescribed form;

(b) signed by the parties to the contract; and

(c) attested by a labour officer.

(3) A private employment agency shall be considered to be a representative of the foreign employe and liable for breach of any term of the foreign contract of employment under subsection (1).

(4) Despite subsection (1), a migrant worker who is recruited under a government to government arrangement shall have his foreign contract of employment attested in accordance with this Act.

Attestation of foreign contracts of employment.

31. (1) A foreign contract of employment shall not be attested unless the labour officer is satisfied that—

(a) the private employment agency is registered with the Authority;

(b) the private employment agency has executed a security bond;

(c) the employee has not been induced to enter into the contract through fraud, coercion, undue influence, mistake of fact or misrepresentation;

(d) the terms and conditions of employment contained in the contract comply with approved job orders and the provisions of the employment laws;

(e) the employee is medically fit for the performance of the duties stipulated in the contract and a medical certificate in the prescribed form has been given to the attesting labour officer in respect of that employee;

(f) the employee is not bound to serve under any other contract of employment during the period provided in the foreign contract of employment; and

(g) the employee has undertaken pre-departure orientation.

(2) The employee shall appear in person before a labour officer for purposes of attestation.

Security in foreign contracts of employment.

32. (1) Where an—

(a) employer who enters into a foreign contract of employment does not reside or carry on business within Kenya; or

(b) employer resides in Kenya,

the Commissioner for Labour may require the employer to give a security bond in the prescribed form, with one or more sureties resident in Kenya and approved by the Commissioner for Labour for the due performance of the contract in such sums as the Commissioner for Labour considers reasonable.

(2) Where the employer has an authorised agent resident in Kenya, the Commissioner for Labour may require that the security bond specified in subsection (1) be given by the agent and the agent shall personally be bound by the terms of the bond notwithstanding the disclosure of his or her principal.

Offence to induce a migrant worker to proceed abroad under informal contract.

33. A person who—

(a) employs, engages, or knowingly aids in the employment or engagement of a migrant worker with the intention that when so employed or engaged that person shall proceed outside the borders of Kenya; or

(b) induces or attempts to induce a migrant worker to proceed outside the borders of Kenya,

unless the person has duly entered into a foreign contract of employment with the migrant worker under this Act, commits an offence and is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or to both.

Registration of migrant workers.

34. (1) A person who intends to travel to another country for purposes of foreign employment shall apply to the Authority for registration.

(2) The application for registration under subsection (1) shall be accompanied by an attested foreign contract of employment.

(3) The Authority shall, upon reviewing the application under subsection (1) —

(a) record the particulars of the worker in the prescribed manner; and

(b) subject to the fulfilment of all requirements relating to migration, issue a clearance certificate to the migrant worker.

(4) A migrant worker who is not registered under sub-section (1) shall register with the Kenya mission in the country where the worker is employed within ninety days of employment.

(5) A person who contravenes sub section (1) or (4) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three months.

Register of migrant workers.

35. (1) The Authority shall keep and maintain an up to date register of migrant workers in each foreign country.

(2) The register under subsection (1) may be in electronic form.

(3) A copy of the register kept and maintained under subsection (1) shall be kept by every Kenya Mission in each foreign country.

Port of departure.

36. The departure of a migrant worker for foreign employment shall be from a port or point of exit that is designated by the Director of Citizenship and Immigration.

Exemption of certain persons.

37. This Part shall not apply to the departure of—

(a) a person employed in the service of the national government or county government, who, with permission from a competent authority, is going overseas to perform an official duty or for the purposes of education or training, or for employment with an international or multilateral organisation;

(b) a student;

(c) a trainee;

(d) a tourist;

(e) employed seafarers;

(f) a person emigrating at self-initiative for employment in a foreign country;

(g) a person emigrating to a foreign country for the purpose of medical treatment and care, or for religious, business or investment purposes;

(h) a dependant of any Kenyan citizen employed in a foreign country or lawfully staying in a foreign country;

(i) a person who initially emigrated for education and later accepted employment in a foreign country; or

(j) a person emigrating for a purpose which is not in conflict with the purposes of this Act.

## PART V—ENFORCEMENT

Appointment of inspectors.

38. (1) The Authority shall, by notice in the *Gazette*, appoint qualified persons, whether by name or by title of office, to be inspectors of the Authority for such jurisdiction units as shall be specified in the notice appointing them.

(2) An inspector shall—

(a) monitor compliance with the provisions of this Act; and

(b) perform such other functions as may be required under this Act or under the instrument appointing him.

Powers of inspectors.

39. (1) An inspector may, without notice and at any reasonable time during the day, enter any premises for the purpose of conducting any search therein where there are reasonable grounds for believing that such entry or search is necessary for the prevention, investigation or detection of an offence under this Act.

(2) In the exercise of the powers conferred upon an inspector by subsection (1), the inspector may—

(a) require a private employment agency to produce any books or documents which relate to its business;

(b) at any place require any person who has the possession, custody or control of any books or

documents relating to the business of any person who is or was managing a private employment agency, to produce the books or documents;

(c) examine and make extracts from, and copies of, any books or documents referred to in paragraph (a) or (b);

(d) require an explanation of any entry in any books or documents referred to in paragraph (a) or (b); or

(e) seize any book or document referred to in paragraph (a) or (b) that in his opinion, may afford evidence of the commission of an offence under this Act.

(4) Every private employment agency and every person employed by the private employment agency, shall at any reasonable time, furnish such reasonable facilities as may be required by an inspector for entering the premises for the purpose of inspecting or examining the books and documents kept on the premises, or for making any inquiry in relation thereto.

(5) A person shall not—

(a) make a false statement in any representation to an inspector investigating a case under this section which that person knows to be false in any material particular;

(b) refuse to answer any question which an inspector, in the exercise of his or her functions under this section, asks him or her;

(c) refuse to comply, to the best of his or her ability, with any requirement made by an inspector in the exercise of his functions under this section; or

(d) hinder an inspector in the exercise of his or her functions under this section.

(6) A person who contravenes any provision of subsection (5) commits an offence and shall be liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding three months.

Orders of the Authority.

40. The Authority may issue to a private employment agency such orders as it may consider necessary for compliance with the provisions of this Act.

## PART VI—MISCELLANEOUS PROVISIONS

Restrictions on labour migration.

41. (1) The Cabinet Secretary may, by notice in the *Gazette*, restrict the migration of Kenyan workers to any country if the migration to that country may jeopardize public or state interest or the health and safety of the migrant workers.

(2) The Cabinet Secretary may, by notice in the *Gazette*, in the public interest or for preservation of human resources, temporarily restrict migration of a category of workers to any country.

Repatriation of migrant workers.

42. (1) The repatriation of a migrant worker and his or her personal belongings shall be the primary responsibility of the private employment agency which deployed the worker and all costs attendant to repatriation shall be borne by or charged to the agency if—

(a) the migrant worker is found on medical examination to be unfit for employment;

(b) the migrant worker fails to secure the employment signed for under the contract of employment; or

(c) the Authority finds that the migrant worker has been employed by misrepresentation or mistake.

(2) Repatriation of the remains and personal belongings of a deceased migrant worker shall be facilitated by the private employment agency in collaboration with the employer within one month of the death of a migrant worker.

(3) Despite sub section (1) and (2) where the termination of employment is due solely to the fault of the migrant worker, the private employment agency shall not be responsible for the repatriation of the migrant worker.

(4) A private employment agency that contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding five million.

Bilateral labour agreements.

43. (1) The national government may conclude a memorandum of understanding, a bilateral labour agreement or any other instrument with another country to—

(a) enhance safe, fair and orderly migration;

(b) increase opportunities for migration by Kenyan citizens for foreign employment;

(c) improve the management of labour migration;

(d) improve the repatriation and reintegration of the migrant workers; and

(e) safeguard the welfare and rights of migrant workers and the members of their families.

(2) Any memorandum of understanding, bilateral labour agreement or any other instrument under the subsection (1) shall be concluded on the basis of the following principles, among others—

(a) promotion of fair recruitment;

(b) protection of the migrant workers' rights;

(c) safety and human dignity of migrant workers within the country;

(d) protection of labour and other human rights of Kenyan migrant workers in the concerned country;

(e) respect to international standards;

(f) migrant workers' right to information; and

(g) right to redress if their rights are violated in the concerned country.

Petitions to the Cabinet Secretary on private employment agencies.

44. (1) A person may submit a petition to the Cabinet Secretary on any activity of a private employment agency.

(2) A petition shall set out —

(a) the name of the private employment agency;

(b) whether the issues in respect of which the petition is made are pending before any court of law or other constitutional or legal body;

(c) activities of the private employment agency in question;

(d) a clear, proper and respectful prayer, reciting the definite object of the petitioner or petitioners in regard to the matter to which it relates; and

(e) the name and address of the person making the petition.

(3) The Cabinet Secretary shall consider the petition presented under subsection (1) within one month.

(4) The Cabinet Secretary shall, within fifteen days of his or her decision, in writing, notify the petitioner of his decision.

(5) The Cabinet Secretary may, in the performance of his or her functions under this Act, consult with such other persons or bodies as he or she may consider necessary.

Appeals.

45. A person who is aggrieved by any administrative decision made under this Act, may appeal to the Employment and Labour Relations Court within thirty days of the decision.

Offences.

46. A person who—

(a) engages in the deployment of a migrant worker in a job which is harmful to the health, security or dignity of the migrant worker;

(b) substitutes or alters a foreign contract of employment that has been approved and attested by a labour officer without the approval of the labour officer; or

(c) withholds the travel documents of a migrant worker before departure for monetary or financial consideration, or for any other reason, other than those authorized under this Act,

commits an offence and is liable, on conviction, to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding two years, or both.

General penalty.

47. (1) A person who commits an offence under this Act for which no specific penalty is provided is liable, on conviction, to a fine not exceeding one million shillings or to a term of imprisonment not exceeding two years, or to both.

(2) In addition to any penalty referred to in sub-section (1), the Court may—

(a) order the revocation of the certificate of registration of a private employment agency; or

(b) prohibit the doing of any act to stop the continued contravention of this Act.

Safe houses.

48. The Cabinet Secretary for matters relating to foreign affairs shall establish safe houses in labour destination countries to provide temporary holding for migrant workers in distress.

Regulations.

49. (1) The Cabinet Secretary may, in consultation with county governments, make regulations necessary for the purpose of giving effect to, or for the better administration of this Act.

(2) Without prejudice to the generality of subsection (1), regulations made under subsection (1) may prescribe—

(a) forms to be used under this Act;

(b) the manner in which registers are established or maintained under this Act, including the details or particulars required to be entered in the registers;

(c) content and duration of pre–departure orientation programmes;

(d) exemption of any area, occupation, organization or class of persons from any part of this Act;

(e) fees to be paid under this Act;

(f) fees which may be charged in respect of the business of a private employment agency;

(g) requirements for opening branches;

(h) cancelation of certificates of registration;

(i) records to be kept in respect of a private employment agency;

(j) premises to be used by private employment agencies;

(k) qualifications of the directors or persons operating private employment agencies;

(l) procedure for change of physical location of the office;

(m) filing of returns by private employment agencies;

(n) nature and form of security to be given by the proprietor of a private employment agency for any recruitment of employees;

(o) procedure for making or paying claims for compensation under the security bond; and

(p) procedure for lodging complaints with the Authority.

Transitional provisions.

50. (1) A person who at the commencement of this Act is carrying on business as a private employment agency on the authority of registration certificate issued under the Labour Institutions Act shall apply for fresh registration under this Act within six months of the commencement of this Act.

(2) Any administrative direction made by the Cabinet Secretary, the Commissioner for Labour, the Committee or the Authority under the Labour Institutions Act in force immediately before the commencement of this Act shall have force as if it was a direction made by the Cabinet Secretary, the Commissioner for Labour, the Committee or the Authority under this Act.

(3) Any statutory instrument made under the Labour Institutions Act or the Employment Act shall remain in force, so far as it is not inconsistent with this Act, until it is revoked by a statutory instrument made under this Act, and shall be deemed for all purposes to have been made under this Act.

Consequential amendments.

51. The laws identified in the Schedule are amended as provided.

## SCHEDULE *(S. 51)*

## CONSEQUENTIAL AMENDMENTS

| **Act** | **Section** | **Amendment** |
|---|---|---|
| The Labour Institutions Act, Cap 234 | 2 | Delete definition of Director |
| | 2 | Delete the definition of Director |
| | 6 (1) (g) | Delete director of employment and substitute therefor with director general of the National Employment Authority. |
| | 30(1) (b) | Delete |
| | 30 (1) (c) | Delete the words "and employment" |
| | 30 (2) (b) | Delete. |
| | 32 (2) (b) | Delete. |
| | 32 (2) | Delete |
| | 32 (4) | Delete the words "the Director of Employment". |
| | 33(1)(b) | Delete |
| | 36 | Delete |
| | 42 (1) | Delete the words "and the Director of Employment" |
| | 42 (3) | Delete |
| | 54A | Delete |
| | 54B | Delete |
| | 54C | Delete |
| | 55 | Delete |
| | 56 | Delete |
| | 57 | Delete |
| | 58 | Delete |
| | 59 | Delete |
| | 60 | Delete |
| The Employment Act, Cap 226 | 83 | Delete |
| | 84 | Delete |
| | 85 | Delete |
| | 86 | Delete |

## MEMORANDUM OF OBJECTS AND REASONS

### Statement of the Objects and Reasons for the Bill

The principal object of the Bill is to provide for the regulation of private employment agencies and the recruitment of workers within and outside Kenya and to safeguard the rights and welfare of job seekers and migrant workers. The Bill seeks to consolidate the laws relating to labour migration and proposes to repeal sections of the Labour Institutions Act and the Employment Act.

**Part I** of the Bill provides for preliminary matters such as the interpretation of terms used in the Bill, objects of the Act and the application of the Act.

**Part II** of the Bill provides for the administration of the Act. This Part stipulates the functions of government and the National Employment Authority under the Bill and specifies the powers necessary for the performance of those functions. It establishes the Multi-Agency Committee on Vetting of Private Employment Agencies which is responsible for vetting and approving applications for registration made by private employment agencies. This Part also outlines the functions of labour attaches.

**Part III** of the Bill provides for the registration of private employment agencies and the cancellation of such registration, This Part also provides for the execution of security bond by private employment agencies engaged in the employment of workers for foreign employment. The security bond is intended to be used in the repatriation, payment of wages and other entitlements in the event of default by the private employment agency or the employer. It also provides for the approval of job orders and the advertisement of jobs by private employment agencies and the development of a code of conduct for employment agencies.

**Part IV** of the Bill provides for pre-departure procedures for foreign employment. This Part provides for pre departure training for migrant workers, the attestation of foreign contracts of employment and the registration of migrant workers. The part also exempts certain classes of persons from the pre departure procedures. Part V of the Bill provides for enforcement of the Act and provides for the appointment of inspectors and their functions and powers.

**Part VI** of the Bill provides for miscellaneous matters such as the establishment of the Migrant Workers Welfare Fund under the Public Finance Management Act., the repatriation of migrant workers, conclusion of bilateral labour agreements, appeals against administrative decisions made under the Bill, general offences, general penalty, establishment of

safe houses in destination countries, the power of the Cabinet Secretary to restrict labour migration and to make regulations and transitional provisions.

**Schedule** provides for repealed laws.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not delegate legislative powers, nor does it limit the fundamental rights and freedoms.

**Statement on how the Bill concerns county governments**

The Bill mandates the national government to consult county governments in creation of registers and investment opportunities for migrant workers hence affecting the functions of county governments in terms of developmental planning.

The Bill is therefore a Bill concerning county government in terms of Article 110 (1) (a) of the Constitution.

**Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution**

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 19th July, 2024.

MUTINDA MAUREEN TABITHA,
*Senator*.

**Public finance** Lawmakers refused to approve expenditure following fears of corruption

# MPs want Uhuru's Sh10 billion last-minute spending audited

Federation says lack of transparency during transitions is a burden to taxpayers

BY SAMWEL OWINO

A parliamentary committee wants a forensic audit into the spending of Sh10 billion during the last days of Mr Uhuru Kenyatta's presidency.

Among the amounts the MPs want audited is Sh6,091,140,702, which was paid for Helios Investment's exit from Telkom Kenya just three days before the August 9, 2022 General Election.

The money, which was used to buy out Helios, was withdrawn un[illegible]icle 223 of the Constitu[illegible]d disbursed on August 5, 20[illegible].

Parliament was to approve the expenditure later, as required by law, but MPs have refused to do so.

The National Assembly Public Petitions Committee has also called for an audit of the Sh4 billion maize subsidy, which was paid to the Ministry of Agriculture on August 4, 2022.

The payment was also made under Article 223 of the Constitution, but MPs have refused to approve it.

"The committee recommends a forensic audit to establish the alleged fraud, corruption and other financial irregularities in accordance with section 37 of the Public Audit Act, 2025," the committee report says.

The article also allows the government to spend when a need for expenditure for a purpose for which no amount has been appropriated by the National Assembly arises.

This need can be a natural disaster or an emergency that cannot wait for Parliament to appropriate funds.

In such circumstances, parliamentary approval must be sought later to regularise the expenditure.



Consumers Federation of Kenya Secretary-General Stephen Mutoro (left). He presented the petition to MPs. FILE I NATION

The subsidy scheme was introduced by the government from July 19, 2022 to August 20, 2022 to address the skyrocketing prices of maize flour.

During this period, consumers bought a 2kg packet of flour for Sh100 instead of the prevailing market price of Sh210.

A petition was presented to Parliament by Consumer Federation of Kenya Secretary-General, Stephen Mutoro, who asked MPs to order investigations into the Sh55 billion spent during the transition period between July and September in contravention of Article 223 of the Constitution.

Mr Mutoro said the administration spent the money without approval of MPs.

"The petitioner prays that the relevant laws be amended to prevent outgoing administrations from spending public funds irregularly and make any other recommendations he may deem fit," the petition reads.

Mr Mutoro expressed concern that the expenditure was made when the country was grappling with a huge public debt, high inflation and a high cost of living.

He added that lack of transparency and accountability during government transitions is worrying and a burden on the taxpayer.

He complained that independent institutions continue to suffer from political interference and in most cases cede their autonomy, especially when fiscal decisions have to be made.

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# Climate resilience deal signed

BY MERCY KOSKEI

Nakuru Governor Susan Kihika has commissioned a Sh51.4 million water project targeting 12,500 residents across seven villages in Rongai, as she inked a deal with the Netherlands on climate adaptation.

The Umoja Water Project, funded through a partnership between the county government and World Vision, involves sinking boreholes, installing solar panels and setting up automated kiosks to provide clean and reliable water to households, schools and hospitals.

The project, in which the county government contributed Sh44.5 million and World Vision Sh6.9 million, also address challenges like high fluoride levels and low water tables.

The county also signed an agreement with the Netherlands Enterprise Agency to transform Nakuru into a resilient Sponge City.

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | THIRD SESSION

THE SENATE

**INVITATION FOR SUBMISSION OF MEMORANDA AND PUBLIC HEARING**

**THE COUNTY LIBRARY SERVICES BILL, 2024 (SENATE BILLS NO. 40 OF 2024)**

The **County Library Services Bill, 2024 (Senate Bills No. 40 of 2024)** was read a First Time in the Senate on Tuesday, 17th September, 2024 and thereafter stood committed to the Standing Committee on Labour and Social Welfare for consideration. The Committee is required, under standing order 145(5) of the Senate Standing Orders, [illegible]itate public participation on the Bill and to take into account the views and recommendations of the public [illegible]e Committee makes its report to the Senate.

The principal object of the Bill is to promote the establishment and use of libraries in counties so as facilitate access to information, improve education standards and reduce levels of illiteracy in the counties. The Bill provides for the role of counties in provision of library services and also establishes a County Library Services Development Committee in each county.

In accordance with the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Standing Committee on Labour and Social Welfare now invites interested members of the public to submit any representations that they may have on the Bill by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to laboursocialwelfarecomm.senate@parliament.go.ke to be received on or before **Monday, 14th October, 2024 at 5.00 p.m.**

In addition, the Committee will hold a public hearing on the Bill on **Tuesday, 15th October, 2024** at **10.00 a.m.** in **Committee Room 2, Bunge Tower, Parliament Buildings, Nairobi.** Members of the public are welcome to attend this hearing.

The Bill and a digest that summarizes the contents and context of the Bill may be accessed on the Parliament website at http://www.parliament.go.ke/the-senate/house-business/bills.

**J. M. NYEGENYE, CBS,**
**CLERK OF THE SENATE.**

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**INVITATION FOR SUBMISSION OF MEMORANDA AND PUBLIC HEARING**

**THE LABOUR MIGRATION MANAGEMENT (No. 2) BILL, 2024 (SENATE BILLS NO. 42 OF 2024)**

The **Labour Migration Management (No. 2) Bill, 2024 (Senate Bills No. 42 of 2024)** was read a First Time in the Senate on Wednesday, 18th September, 2024 and thereafter stood committed to the Standing Committee on Labour and Social Welfare for consideration. The Committee is required, under standing order 145(5) of the Senate Standing Orders, to facilitate public participation on the Bill and to take into account the views and recommendations of the public when the Committee makes its report to the Senate.

The principal object of the Bill is to provide for the regulation of private employment agencies and the recruitment of workers within and outside Kenya and to safeguard the rights and welfare of job seekers and migrant workers. The Bill seeks to consolidate the laws relating to labour migration and to repeal some sections of the Labour Institutions Act, Cap. 234 and the Employment Act, Cap. 226.

In accordance with the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Standing Committee on Labour and Social Welfare now invites interested members of the public to submit any representations that they may have on the Bill by way of written memoranda.

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# Moi University dons, staff vow to continue with the work boycott

▸ Workers claim the university management has failed to address their grievances.

▸ Lecturers and university staff suspended their strike Thursday after inking deal with state.

LYNN KOLONGEI, UASIN GISHU

Learning activities at the Moi University main campus and its satellite campuses will remain paralysed as lecturers and other staff vowed to continue with their strike which began on August 26.

The teaching and non-teaching staff through their unions, University Academic Staff Union (UASU), Kenya Universities Staff Union (KUSU), Kenya Union of Domestic, Hotels, Education Institutions, Hospitals and Allied Workers (KUDHEIHA) on Friday took to the streets of Eldoret to agitate for an array of issues affecting them including failure by the University to honor their past Collective Bargain Agreements (CBA). They said that despite their colleagues from other universities resuming their work, their strike would continue.



Members of University Academic Staff Union and Kenya University Staff Union from Moi University demonstrate as they protest the delay of salaries and other academic requirements in Eldoret Uasin Gishu County yesterday. [Peter Ochieng, Standard]

The staff who claimed that the University management has neglected them and failed to address their grievances since they began their strike a month ago are also protesting against salary delays and payment of half salaries.

"The nationwide UASU strike began two weeks ago when we were already in the streets. We are stating that no learning activities will resume in Moi University campuses until our demands are met," said one of the lecturers.

The workers want the university to honour the 2017 and 2021 Collective Bargaining Agreement (CBA).

"Staff on contract are not paid gratuity funds, professors who supervise thesis have not been paid and our third-party deductions including pensions, union dues and bank loans are not remitted.

"The 800 academic staff will not go back to class until these demands are met," said Dr Susan Matiku.

NAIROBI

## State accused of denying media and public information

The media and general public have been unable to access information due to failure by the government to honour constitutional provisions.

Media stakeholders heard that secrecy by the State has also contributed to denying Kenyans information that they are entitled to, especially when journalists request access to it.

These details emerged on Friday during an event organised by Media Council of Kenya and Katiba Institute on International Day on Universal Access to Information.

The meeting was held under the theme, "Mainstreaming Access to Information and Participation in the Public Sector," which also serves as a reminder that the right of access to information is a fundamental right that plays a critical role in creating open, inclusive and transparent governance sys[illegible] the world.

Mercy Wambua, Commission Secretary and Chief Executive Officer of Commission on Administrative Justice (Office of the Ombudsman), recommended the need to support the main streaming of access to information and public participation in the public sector.

[James Wanzala]

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The principal object of the Bill is to provide for the regulation of private employment agencies and the recruitment of workers within and outside Kenya and to safeguard the rights and welfare of job seekers and migrant workers. The Bill seeks to consolidate the laws relating to labour migration and to repeal some sections of the Labour Institutions Act, Cap. 234 and the Employment Act, Cap. 226.

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# THE LABOUR MIGRATION AND MANAGEMENT (NO.2) BILL, 2024

## (SENATE BILLS NO. 42 OF 2024)

**List of Stakeholders**

1. Ministry of Labour and Social Protection
2. National Gender and Equality Commission (NGEC)
3. Council of Governors (COG)
4. Ministry of Foreign and Diaspora Affairs, State Department for Diaspora Affairs (SDDA)
5. Association of Skilled Migrants Agencies of Kenya (ASMAK)
6. Kenya National Chamber of Commerce and Industry (KNCCI)
7. National Intelligence Service
8. George Chacha
9. Kwale County Librarians

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
|---|---|---|---|---|
| Long title | Ministry of Labour and Social Protection | Amend to read—<br><br>*AN ACT of Parliament to provide for the legal framework to regulate and streamline the recruitment of workers within and outside Kenya; safeguard the rights and welfare of* | The long title attempts to regulate private employment agencies and attempts to amend the Labour Institutions Act. | DECLINE—<br>Reference to "Office of the Secretary Labour Migration Management" is misplaced as that is not an office envisioned in the Bill. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | *job seekers and migrant workers; to establish Migrant Workers Welfare Fund and the Office of the Secretary, Labour Migration Management: and for connected purposes.* | | |
| | National Gender and Equality Commission (NGEC) | Delete the word "*within*" from the long title. | There is already legal framework to regulate recruitment of workers within the country. | DECLINE –<br>The labour migration process starts from within the country and the Bill regulates some conduct within the country |
| 2 | Ministry of Labour and Social Protection | Delete the definition of "*Authority.*" | The same is already defined under the National Employment Authority Act. | DECLINE –<br>It is necessary to cross-reference to the National Employment Authority Act (CAP 227) for drafting clarity. |
| | | Delete the definition of "*Committee.*" | Already provided for under the Labour Institutions Act. | DECLINE –<br>This is a proposed Multi Agency Committee on Vetting of Private Employment Agencies established under Section 8 of the Bill and is different from the |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | | | "Work Permits Committee" under Section 8 of the Labour Institutions Act. . |
| | | Delete definition of *"Director General"* and substitute with definition of *"Secretary of Labour Migration Management."* | Director General is already defined under the National Employment Authority Act. | DECLINE – It is necessary to cross-reference to the National Employment Authority Act (CAP 227) for drafting clarity. |
| | | Delete definition of *"private employment agencies."* | They are provided in other statutes. | DECLINE – It is necessary to provide a definition in this statute for drafting clarity. |
| | ASMAK | Provide clear definition of agencies operating in Kenya according to ILO definitions, distinguishing between private employment agencies (PEAs) and private recruitment agencies (PRAs). | This ambiguity raises concerns about the legal status and regulatory oversight of these entities under Kenyan law. | DECLINE – The definition of PEAs as provided in the Bill aligns to ILO Convention 181. |
| 3 | Council of Governors (COG) | Incorporate skills based recruitment to promote ethical and transparent overseas employment. | There is need to prioritise strict skills assessment before deployment. | DECLINE – Skills-based recruitment would create unnecessary bureaucratic barriers that could limit legitimate |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | | | employment opportunities for Kenyan workers seeking overseas employment and fails to recognise on the job training.<br><br>Recognition of Prior Learning (RPL) frameworks already exist to validate worker competencies without imposing additional restrictive assessments. |
| | ASMAK | Include protecting all parties involved in the labor migration industry, including the migrants and the private agencies. | Framework seeks to establish equitable practices that safeguard the rights of both labor migrants and recruitment agencies. | DECLINE –<br>The focus of the Bill is protection of Labour Migration.<br><br>Section 4 of the Bill specifies that its's application extends to private agencies, and they are therefore protected. |
| 4 | Ministry of Labour and Social Protection | Delete 4 (a) | Catered for in other statutes. | DECLINE-<br>4(a) provides that the Act shall apply to private employment agencies, which is the primary focus of the Bill. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | ASMAK | Recognize migrant workers as key stakeholders directly impacted by the provisions of the Bill. | Given the significant influence that the Bill's regulations and protections will have on their rights, working conditions, and welfare. | DECLINE-<br>Section 3 on the *Objects of the Act* provides for and recognises migrant workers who are the primary focus group of the Bill. |
| 5 | COG | Include a condition- Deployment shall be contingent upon meeting specific skill and qualifications criteria. | This will provide merit based recruitment. | DECLINE –<br>Skills-based recruitment would create unnecessary bureaucratic barriers that could limit legitimate employment opportunities for Kenyan workers seeking overseas employment and fails to recognise on the job training.<br><br>Recognition of Prior Learning (RPL) frameworks already exist to validate worker competencies without imposing additional restrictive assessments. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| 6 | Ministry of Labour and Social Protection | Delete and introduce provisions on establishment of Office of the Secretary of Labour Migration Management. | The Office of the Secretary of Labour Migration Management should be the administrator of the Bill and not the Director General under the National Employment Authority Act. | DECLINE-<br>The existing National Employment Authority framework provides adequate administrative capacity. Creating a new office would result in duplication of functions and unnecessary administrative costs. The Director General under the National Employment Authority Act has sufficient mandate and resources to implement the Bill effectively. |
| | COG | Insert—<br>*(a) Conduct periodic third party audits and merit based performance reviews of its operations under the Act to ensure transparency and effectiveness.* | This will strengthen governance within the Authority. | DECLINE—<br>Existing oversight mechanisms through Parliament, the Auditor General, and relevant Cabinet Secretary provide sufficient accountability. Mandatory third-party audits would impose additional financial burden on the Authority and could compromise operational independence. Internal performance review mechanisms are more appropriate and cost-effective. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | ASMAK | Require the Authority to maintain comprehensive and up-to-date records of all migrant workers. | This data collection is crucial for effective oversight and serves as a foundational element in the formulation of policies to safeguard migrant workers' rights. | DECLINE—<br>Third party data collection will breach data protection and privacy rights of migrant workers. Comprehensive record-keeping requirements could violate the Data Protection Act, 2019 and create potential for misuse of personal information.<br><br>Additionally, detailed migrant worker data constitutes trade secrets of employment agencies and mandatory disclosure could undermine legitimate business interests and competitive advantage.<br><br>Existing registration mechanisms provide adequate data for policy formulation without compromising worker privacy or agency confidentiality. |
| 7 | Ministry of Labour and Social Protection | Delete and introduce provisions on establishment of Office of the Secretary of Labour Migration Management. | The Office of the Secretary of Labour Migration Management should be the administrator of the Bill | DECLINE-<br>The existing National Employment Authority framework provides adequate administrative capacity. Creating a new office would result in |

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| | | | and not the Director General under the National Employment Authority Act. | duplication of functions and unnecessary administrative costs. The Director General under the National Employment Authority Act has sufficient mandate and resources to implement the Bill effectively. |
| 8 | Ministry of Labour and Social Protection | Delete | Already provided for under the Labour Institutions Act. | DECLINE –<br>This is a proposed Multi Agency Committee on Vetting of Private Employment Agencies established under Section 8 of the Bill and is different from the "Work Permits Committee" under Section 8 of the Labour Institutions Act. . |
| 8 | Ministry of Foreign and Diaspora Affairs, State Department for Diaspora Affairs (SDDA) | Delete the words *"foreign affairs"* in 8 (2) (b). | SDDA is mandated to liaise with the Ministry of Labour and Social Protection in the implementation of Labour Migration Policy and the Global Labour Strategy. | DECLINE–<br>Foreign affairs remains an integral component of labour migration management, particularly in negotiating bilateral agreements and managing diplomatic relations with destination countries. Removing this reference would limit the |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | | | comprehensive approach needed for effective international labour migration governance. |
| 8 | ASMAK | Include agency representatives within the committee. | The inclusion of agency representatives will ensure that their perspectives, concerns, and interests are adequately represented and considered in decision-making processes. | DECLINE–<br>Including private agency representatives in the regulatory committee would create inherent conflicts of interest and compromise the independence of oversight functions.<br>Regulatory bodies must maintain objectivity and cannot include representatives from entities they are mandated to regulate. Industry input can be obtained through formal consultation processes without compromising regulatory integrity |
| 8 | ASMAK | Each representative of private agencies shall be entitled to half a vote. | This provision is designed to mitigate potential conflicts of interest. The representative should be either the CEO of the relevant association or a | DECLINE-<br>For the same reasons as above. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | | democratically elected delegate. | |
| 9 | Ministry of Labour and Social Protection | Delete | Already provided for under the Labour Institutions Act. | DECLINE-<br>This Committee and its mandate is not explicitly provided for in the Labour Institutions Act. It is therefore necessary under this Bill.<br>Further, the scope of the Labour Insttitutions Act does not include foreign based contracts. |
| 10 | Ministry of Labour and Social Protection | Delete | Already provided for under the Labour Institutions Act. | DECLINE-<br>This Committee and its mandate is not explicitly provided for in the Labour Institutions Act.<br>The scope of the Labour Insttitutions Act does not include foreign based contracts. |
| 11 | Ministry of Labour and Social Protection | Include reporting to the relevant Cabinet Secretary. | The labour attaché reports to the Head of Mission and the relevant Cabinet Secretary. | DECLINE—<br>The provision under paragraph (o) includes a report to the relevant CS. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| 11 & 12 | SDDA | Include diaspora in the provisions. | The appropriate title is the Cabinet Secretary for Foreign and Diaspora Affairs. | DECLINE-<br>The current ministerial structure and titles are adequate for the Bill's implementation. The existing framework under the Ministry of Foreign Affairs provides sufficient mandate for diaspora-related functions without requiring specific textual amendments to include diaspora terminology throughout the legislation. |
| 13-28 | Ministry of Labour and Social Protection | Delete | They are covered under the Employment Act, Industrial Training Act, the Labour Institutions Act and the National Employment Authority Act. | DECLINE—<br>These provisions address specific aspects of labour migration that are not adequately covered under existing general employment legislation. Labour migration presents unique challenges requiring specialized regulatory provisions that cannot be effectively addressed through broad employment laws. These clauses provide necessary specific protections for migrant workers that existing statutes do not contemplate. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| 13 | COG | Include a provision on establishment of local labour advisory boards within counties. | This is to offer equitable participation across regions. | DECLINE-<br>Establishing county-level labour advisory boards would create unnecessary bureaucratic layers and potential conflicts with national labour migration policy. Labour migration is primarily an international matter requiring centralized coordination and uniform standards. County-level boards could lead to inconsistent policies and undermine the unified national approach necessary for effective bilateral agreements and international relations. |
| 19 | ASMAK | Remove requirement for demonstrating the existence of a new market. | Not every entity interested in entering this sector is expected to create or identify a new market. Many may seek to operate within established markets. | ACCEPT –<br>Remove new market demonstration requirement under clause 19 as restricting companies to new markets would be discriminatory. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| 19 | ASMAK | Revise the requirement that directors must possess human resource management experience. | The field of agency operations encompasses diverse competencies that may not necessarily align with traditional HR experience. | ACCEPT –<br><br>Revise director experience requirements to be more flexible. |
| 20 | National Intelligence Service | The security bond under clause 20 should not be transferrable. | | ACCEPT –<br>Non-transferable security bonds ensure direct accountability of the original licensee and prevent circumvention of regulatory oversight through bond transfers. This provision protects against agencies transferring bonds to avoid liability while maintaining regulatory control over who holds security guarantees. Non-transferable bonds ensure that regulatory authorities maintain direct relationship with the entity that provided the original security. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| 21 | National Intelligence Service | Create a penalty under clause 21 for anyone in contravention of the reasons for cancellation. | Provide for the offence of misleading or false information with regards specifically to acquisition of registration. | ACCEPT –<br>Include penalties for false information regarding registration. |
| 26 | NGEC | Replace "*may*" with "*shall*". | It should be mandatory to develop a code of conduct to cure cases of misconduct. | ACCEPT –<br>Make code of conduct development mandatory. |
| 28 | COG | Introduce provision of tiered orientation programs tailored to different skill levels. | This is to make training relevant and effective. | DECLINE—<br>Tiered orientation programs would create administrative complexity and potential discrimination between workers based on skill levels. A standardized orientation program ensures equal treatment of all migrant workers and maintains consistency in essential information delivery. Differentiated programs could lead to unequal |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | | | protection and varying standards of preparation, which undermines worker equity principles. |
| 30 | COG | Introduce independent oversight during contract negotiation. | This is to ensure merit and integrity in the process. | DECLINE –<br>Independent oversight during contract negotiations would interfere with legitimate business operations and contractual freedom between employers and workers. Such oversight could delay employment processes, increase costs, and discourage foreign employers from engaging Kenyan workers. Existing labour laws and dispute resolution mechanisms provide adequate protection without requiring intrusive oversight at the negotiation stage. |
| 34 | NGEC | (1) In 34 (1) registration should be discretionary and not mandatory.<br>(2) Delete sub clauses (4) and (5). | Registration should be voluntary and mandatory for those who wish to be protected by the government. | DECLINE —<br>Clause 37(f) of the Bill provides that tnePart shall not apply to "A person emigrating at self-initiative for employment in a foreign country." |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | | It might be difficult to implement 34 (5) | |
| 38 | COG | Include counties in appointment of inspectors where necessary.<br>Expand inspector's role to include performance based oversight. | This is in support of devolution and for effective implementation of the Bill. | DECLINE—<br>Labour migration oversight requires specialized national expertise and uniform standards that cannot be effectively devolved to county level.<br>Including counties in inspector appointments could compromise technical competency and create inconsistent enforcement standards.<br><br>Labour migration being an international matter requires centralized oversight with inspectors accountable to national authorities to ensure consistent application of international agreements and standards. |
| 39-41 | Ministry of Labour and Social Protection | Delete | This is covered under other labour laws. | DECLINE—<br>These provisions address specific enforcement mechanisms for labour migration that are not |

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| | | | | adequately covered under general labour laws. Labour migration requires specialized enforcement procedures due to its cross-border nature and the unique vulnerabilities of migrant workers. General labour laws do not contemplate the specific challenges and enforcement requirements for international labour migration scenarios. |
| 42 | NGEC | Repatriation of remains of deceased worker should not be the work of the agency or the employer. | A welfare fund should be established on the same.<br><br>Agencies may close or be de-registered. | DECLINE –<br>Agencies and employers should bear responsibility for repatriation costs as part of their duty of care to workers. This creates accountability and incentivizes proper worker protection. |
| 43 | NGEC | Replace *"may"* with *"shall"*. | This should be mandatory. | ACCEPT—<br>Make welfare provisions mandatory. |
| 44 & 46 | Ministry of Labour and Social Protection | Delete | The Bill is on labour migration and not regulation of private employment agencies. | DECLINE –<br>The regulation of private employment agencies is integral to effective labour migration management. Private employment agencies are key players in the |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | | | labour migration process and their regulation is essential for protecting migrant workers. Removing these provisions would create regulatory gaps that could expose workers to exploitation and undermine the Bill's protective objectives. |
| 49-51 | Ministry of Labour and Social Protection | Delete | This is covered under other labour laws. | DECLINE—<br>These provisions contain specific labour migration protections not adequately addressed in general labour legislation, that the cross-border nature creates unique legal challenges requiring specialized provisions, and that deleting these clauses would leave migrant workers without essential protections specific to their international employment circumstances. |
| **NEW CLAUSES** | | | | |
| | SDDA | Include new provisions on Diaspora Placement Agency. The | DPA plays a vital role in positioning Kenya as a | DECLINE – |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | functions of the Diaspora Placement Agency shall be to---<br>(a) position Kenya as a leading labour market brand globally;<br>(b) introduce and market Kenya's talent to foreign employers and markets;<br>(c) provide information on Kenya's labour demographics;<br>(d) negotiate with foreign employers for placement of Kenyan;<br>(e) seek job opportunities globally;<br>(f) provide a database on available skills;<br>(g) offer information on foreign labour markets; | leading labour market brand, marketing Kenyan talent to foreign employers and providing detailed information on labour demographics. | Establishing a Diaspora Placement Agency would duplicate existing functions of private employment agencies and create unfair government competition with the private sector.<br><br>This would undermine the role of licensed private agencies and create market distortions. The proposed functions overlap significantly with services already provided by the private sector, and government should focus on regulation rather than direct market participation. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | (h) facilitate pre-migration training in preparation for foreign employment;<br>(i) facilitate preparation for documents and visa interviews;<br>(j) provide a system for workers' registry;<br>(k) publicise available resources; and<br>(l) monitor global markets and conduct market research. | | |
| | SDDA | Introduce clauses on diaspora attaché in each Kenyan Mission. They are to---<br>(a) offer support and advocacy for migrant workers in host country;<br>(b) promote employment of Kenyans in host country; | This is in line with the Bill. | DECLINE–<br>Existing labour attaché and consular services already provide adequate support for Kenyan workers abroad. Creating separate diaspora attaché positions would result in duplication of functions, increased diplomatic costs, and potential confusion in service delivery. The proposed functions overlap significantly with existing consular and labour |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | (c) monitor work conditions of migrant workers; (d) promote implementation of BLAs between Kenya and host nation;<br>(e) coordinate repatriation and support for workers in distress. | | attaché responsibilities and do not justify additional specialized positions. |
| | NGEC | Provide for a Migrant Workers Welfare Fund. | This to cater for the welfare of migrant workers. | DECLINE—<br>This is catered for by the security bond. |
| | George Chacha | Introduce provisions for financial literacy education focused on savings and investment. | To ensure workers make the most of their earnings abroad. | DECLINE—<br>Financial literacy education falls outside the scope of labour migration regulation and is adequately addressed by existing financial sector institutions and programs. Including such provisions in labour migration legislation would expand the Bill beyond its core mandate and create implementation challenges. Workers can access financial literacy |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | | | services through banks, SACCOs, and other financial institutions without requiring legislative mandate. |
| | George Chacha | Include training on mental health and stress management. | Can mitigate the psychological toll on migrant workers, especially those employed in stressful environments. | DECLINE – Mental health training falls under the mandate of the Ministry of Health and existing healthcare frameworks rather than labour migration legislation. Including such provisions would expand the Bill beyond its regulatory scope and create overlap with health sector responsibilities. Mental health services should be addressed through appropriate healthcare channels and professional medical frameworks, not labour migration laws. |
| | George Chacha | The migrant online portal should be integrated with border control management information systems. | To identify and verify individuals traveling abroad for employment. | DECLINE – Integration with border control systems raises serious national security, privacy, and data protection concerns and falls outside the scope of labour migration regulation. Such integration would require coordination with immigration authorities and could |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | | | infringe on citizens' freedom of movement. Border control systems have their own legal frameworks and technical requirements that should not be conflated with labour migration portals. |
| | George Chacha | Include provisions for returning workers' skills recognition and utilization. | International experience and valuable skills acquired should be harnessed and utilized locally. | DECLINE–<br>Skills recognition and utilization falls under the mandate of existing professional bodies, TVETA, and the National Qualifications Authority rather than labour migration legislation. This would create jurisdictional conflicts and duplicate existing Recognition of Prior Learning (RPL) frameworks. Skills recognition requires specialized technical expertise and established professional standards that are beyond the scope of labour migration regulation. |
| | George Chacha | Provide incentive schemes for returning workers to invest in their home counties. | Such as tax breaks for those starting businesses or investing in local development projects. | DECLINE –<br>Incentive schemes involving tax breaks and investment policies fall outside the Senate's legislative mandate as per Article 109 & 114 of the |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | | | CoK and require coordination with the National Treasury, Kenya Revenue Authority, and the National Assembly.<br>Such provisions would have significant fiscal implications that cannot be determined within labour migration legislation and require separate policy frameworks and budgetary allocations. |
| | George Chacha | Regular reviews and updates of bilateral agreements should be mandated. | With active participation from migrant workers and labor attaches. | DECLINE –<br>Bilateral agreements are executive functions under the Ministry of Foreign Affairs and treaty-making powers of the President. Legislative mandate of bilateral agreement reviews would infringe on executive prerogatives and constitutional separation of powers. Such agreements involve complex diplomatic negotiations that require executive flexibility and cannot be subjected to rigid legislative timelines or procedures. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | National Intelligence Service | Add a provision to ensure accessibility of medical care to workers in other countries. | (Can be included in the regulations as part of the contract between agencies and migrant worker). | DECLINE—<br>Medical care accessibility in foreign countries falls outside Kenya's legislative jurisdiction and cannot be mandated through domestic legislation. It is a matter of bilateral agreements and foreign healthcare systems over which Kenya has no regulatory authority, and would be unenforceable while creating false expectations for workers. |
| | National Intelligence Service | Reporting channels by Kenyans in distress to be made available and in the Act. | (Can be included in the regulations as a role of the labour attache). | DECLINE–<br>Reporting channels for distressed citizens abroad already exist through established consular services and diplomatic missions.<br>Creating additional reporting mechanisms would duplicate existing emergency services and potentially create confusion about which channels to use.<br>Consular services are adequately equipped to handle distress cases and do not require additional legislative mandate. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | National Intelligence Service | Include measures where workers may be allowed to deposit their passports with the Embassy. | To enable them leave when exploited to avoid instances of passports being taken away by employers. | DECLINE – Passport deposit measures would create operational burdens for diplomatic missions and potentially violate international diplomatic protocols. Embassies are not designed to function as passport storage facilities, and such arrangements could compromise document security and create liability issues. Existing diplomatic and legal channels provide adequate mechanisms for addressing passport retention issues without requiring legislative mandate for embassy storage. |
| | National Intelligence Service | The powers of the Authority under clause 7 should include the power to summon any agency for purposes of responding to any enquiry. | This will provide an avenue for continuous vetting of agencies. | DECLINE – Expanded summoning powers without specific grounds or procedural safeguards violates the principles of administrative justice and fair hearing.<br><br>Such broad powers could be subject to abuse and create unnecessary harassment of legitimate businesses. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | | | Existing regulatory frameworks provide adequate investigation and enforcement mechanisms without requiring expansive summoning authority that lacks proper checks and balances. |
| | National Intelligence Service | Expand statutory requirement for filing annual returns to allow the Authority to request filing of returns whenever there is need. | This will allow the Authority to call upon agencies for impromptu returns. | DECLINE – Allowing impromptu returns requests without defined timelines or specific justification creates regulatory uncertainty and imposes undue administrative burden on businesses. Such discretionary powers could be exercised arbitrarily and interfere with normal business operations. Annual returns provide adequate oversight and additional ad-hoc reporting should only be required under clearly defined circumstances with proper procedural safeguards. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | ASMAK | Clarify the Bill regarding responsibilities of migrant workers in relation to:<br>(1) Termination of process during processing within Kenya;<br>(2) Termination after process at country of destination; and<br>(3) Termination of work due to migrant worker negligent work behavior at country of destination - Absconding/Runaway | | DECLINE - These clarifications would create an overly prescriptive regulatory framework that could disadvantage workers and limit their employment rights. Detailed termination procedures should be governed by individual employment contracts and existing labour law principles rather than being mandated in legislation. Such provisions could create rigid frameworks that may not accommodate diverse employment circumstances across different destination countries. |
| | ASMAK | Clarify Job Security of Recruiters regarding:<br>(1) Penalties due to delay of process.<br>(2) Fraudulent work demands – e.g. Attested but fraudulent. | | DECLINE –<br>Providing job security guarantees for recruiters would shift risk from private businesses to workers and undermine market accountability. Recruiters should bear responsibility for their business risks including process delays and market disruptions. Creating legislative protection for recruiter job security could reduce incentives for efficient service |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | (3) Calamities affecting work/migrant workers e.g. Covid, War | | delivery and proper due diligence in verifying employment opportunities. |
| | ASMAK | Extend certificate of registration validity period from one year to two years. | To align with the Cabinet Secretary's directive extending the validity period. | DECLINE<br>The current certificate validity is two years.. |
| | ASMAK | Prohibit non-governmental organizations (NGOs) from engaging in this sector. | The nature of the business is profit-oriented rather than philanthropic. NGOs would create potential loopholes for tax evasion. | DECLINE –<br>There is no sufficient justification for blanket NGO prohibition. |
| | ASMAK | Implement a grace period during the license renewal process. | Upon submission of an application for renewal at least two months prior to expiration, the license shall remain valid until a final decision is rendered. | DECLINE –<br>Grace periods during license renewal could allow non-compliant agencies to continue operations indefinitely by simply filing renewal applications. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | | | This undermines regulatory effectiveness and could expose workers to services from agencies that may not meet current standards. Timely renewal processes with clear deadlines ensure regulatory compliance and protect worker interests. |
| | ASMAK | Clarify who is responsible for establishing regulations governing the charging practices of agencies. | Essential to clarify the authority designated to formulate, implement, and oversee these regulations. | DECLINE –<br>Designating specific regulatory authority for charging practices would create market interference and undermine free market pricing mechanisms. Charging practices should be governed by market forces and competition rather than regulatory prescription. Such designation could lead to price controls that may discourage private sector participation and limit service innovation in the labour migration sector. |
| | ASMAK | Add provisions for exemption from pre-departure training for certain individuals. | For individuals who may already possess adequate skills, qualifications, or | DECLINE–<br>It would be prudent to include exemption provisions for qualified individuals. |

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT | JUSTIFICATION | COMMITTEE COMMENTS/OBSERVATIONS AND DETERMINATIONS |
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| | | | experience that render training redundant. | |

THE SENATE
RECEIVED
23 OCT 2024
CLERK'S OFFICE
SENATE

THE SENATE
RECEIVED
24 OCT 2024

**MINISTRY OF LABOUR AND SOCIAL PROTECTION**
**OFFICE OF THE CABINET SECRETARY**

Telephone: +254(0)20-2711888
Website: www.labour.go.ke
E-mail: cs@labour.go.ke
When replying, please quote

Social Security House,
Block 'A' Eastern
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P.O. Box 40326-00100
NAIROBI

(1) DSFC
Kindly deal

(2) DDSSC (VK)
Kindly deal
24/10/2024

Ref. No. ML&SP/40/Vol. II (10)

22nd October, 2024

THE SENATE
RECEIVED
24/10/2024
23 OCT 2024
DEPUTY CLERK

**Mr. Jeremiah M. Nyegenye, CBS**
Clerk of the Senate,
Parliament Buildings,
P.O. Box 41842-00100
**NAIROBI**

Ms. Mwanate
Kindly deal.
Kobat
24/10/2024

Dear Nyegenye,

**STAKEHOLDER ENGAGEMENT ON THE LABOUR MIGRATION MANAGEMENT (NO. 2) BILL, 2024 (SENATE BILLS NO. 42 OF 2024)**

This is in reference to your letter Ref. SEN/DSEC/DISSC/SCLSW/2024/145 dated 4th October, 2024 and received on 8th October, 2024 in respect of the stakeholder engagement on the Labour Migration Management Bill, 2024, that is before the Standing Committee on Labour and Social Welfare, for consideration, pursuant to the provisions of Article 118 of the Constitution of Kenya, 2010 and Standing Order 145 (5) of the Senate Standing Orders, and inviting us to submit our written submissions on the Bill.

Instructively, Kenyans are increasingly seeking employment opportunities outside the country due to various push and pull factors locally and abroad. The key regions and destination Countries of Kenyan migrant workers are UK, USA, Canada, Australia, Asia, Latin America, Gulf region and Europe. These workers make significant contribution to the social and economic development of the country mainly through common knowledge and skills transfer and the technological advancement.

Despite the significant benefits accrued by the Country from Labour Migration, Kenyan migrant workers continue to face numerous challenges both locally and in the countries of destination. Key amongst these challenges include: inadequate coordination of Labour Migration; violation of fundamental rights of migrant workers; inadequate accurate up-to-date and reliable data and information on labour migrant workers; weak

cooperation and partnership between countries and regions in Labour Migration; and lack of effective mechanisms for return and re-integration of migrant workers.

Past interventions to address these challenges have been piecemeal in nature, lacked focus, poorly coordinated based on the weak institutional and legal frameworks. In particular, Kenya has continued to focus on initiatives and programs mainly aimed at addressing the plight of migrant workers in distressed situations who have been subjected to mistreatment and violation of their fundamental rights, hence witnessing a major gap in terms of establishing functional systems for Labour Migration Management.

It cannot be gainsaid that the Kenyan workers in diaspora possess immense human, material and financial resources, and that they make significant contribution to the social and economic development of the Country.

In addition, Kenya has committed to the 2030 Sustainable Development Agenda, the 2019 Global Compact for Migration and signed several bilateral agreements with the states of Qatar, United Arab Emirates, United Kingdom of Saudi Arabia and initiated bilateral labour reformations with Jordan, Kuwait, Oman, Poland, Australia, Canada, Germany, UK, Bahrin on recruitment and employment of skilled labour, and Ireland on recruitment of nurses and midwives, among others.

However, the country is yet to conclude agreements with major labour destination countries thus hindering effective protection of Kenya migrant workers in these countries.

Accurate and reliable data on migrant workers in the country is crucial to establish the number of Kenyans residing outside the country, their countries of residence, their occupations, skills and experience levels, and duration of migration, among others.

In adherence to international standards, Kenya has ratified international instruments which impose certain obligations on the country relating to movement of persons and services. These include: -

(a) The International Labour Organization (ILO) Convention on Migration of Employment, 1949 (No. 97);
(b) Migrant Workers (Supplementary Provisions), 1975 (No. 143);
(c) ILO Forced Labour Convention, 1929 (No.29);
(d) The Equal Remuneration Convention, 1950 (No.100); and
(e) ILO Equality Treatment (Social Security) Convention (No.118).

As a long-term solution, the government is focused on the development of comprehensive legal and institutional reforms to facilitate the

achievement of a safe, orderly and productive labour migration management to safeguard the rights and welfare of job seekers and migrant workers, promote opportunities for employment and more significantly, establish a Migrant Workers Welfare Fund and coordinate labour migration management as per Executive Order No. 2 of 2023, to provide protection and assistance to Kenyan migrant workers during departure, stay in destination countries and upon return to the Country.

In order to enrich the contents of the Private Member's Bill sponsored by Hon. Senator Mutinda Maureen Tabitha, attached herewith, please find a comprehensive matrix of our views, as annexed and set out hereunder.

Yours *Sincerely*,

Hon. (Dr.) Alfred Mutua, EGH
**CABINET SECRETARY**

Copy to: **Mr. Shadrack Mwadime, EBS**
Principal Secretary
State Department for Labour and Skills Development
**NAIROBI**

**Dorcas A. Oduor, SC, OGW, EBS**
Attorney General.
Office of the Attorney-General & Department of Justice
**NAIROBI**

REPUBLIC OF KENYA

# MINISTRY OF LABOUR AND SOCIAL PROTECTION

## MATRIX OF AMENDMENTS IN THE LABOUR MIGRATION & MANAGEMENT (NO. 2) BILL, 2024 (SENATE BILLS NO. 42 OF 2024) AND JUSTIFICATION

| CLAUSE (S) | PROPOSED AMENDMENT (S) | JUSTIFICATION |
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| Long Title | Delete the long title and substitute therefor the following new long title-"<br><br>"***AN ACT*** *of Parliament to provide for the legal framework to regulate and streamline the recruitment of workers within and outside Kenya; safeguard the rights and welfare of job seekers and migrant workers; to establish the Migrant Workers Welfare Fund and the Office of the Secretary, Labour Migration Management; and for connected purposes."* | The effective management of labour migration process contemplates multiple agencies deriving their scope and mandate on specialized powers, functions, roles and competences in their specific statutes.<br><br>The long title of the proposed Bill is flawed since it attempts to regulate Private Employment Agencies which are in the purview of the Labour Institutions Act, 2007 as provided for in sections 55, 56, 57 and 58 of the Labour Institutions Act, 2007 (No. 12 of 2007) and further attempts to amend the Labour Institutions Act, 2007 by implication, contrary to the Constitution of Kenya, 2010 and other applicable laws. |
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| Clause 2 in the proposed Bill | Delete the definition of the expression ''Authority'' | In the definition section, Clause 2 as read together with Clause 6 of the proposed Bill attempts to create an Authority that is already in existence vide the provisions of the National Employment Authority Act, 2016.<br><br>In the circumstances, the new proposal undermines the basic structure of the proposed new Bill and is as a consequence, *ultra vires* the National Employment Authority Act, 2016 and the Constitution of Kenya, 2010. |
| | Delete the expression ''Committee'' | Clauses 2, 8, 9 & 10 of the proposed Bill attempts to regulate the Inter-Ministerial Committee on registration and vetting of Employment Bureaus and Agencies contrary to Sections 54A, 54B, 54C and section 56 (2) of the Labour Institutions Act, 2007 which substantively establishes the Inter-Ministerial Committee on registration and vetting of Employment Bureaus and Agencies as espoused in the Security Laws (Amendment) Act (*No. 19 of 2014*). |
| | Delete the definition of ''Director General'' and substitute therefor the following new definition in its proper alphabetical sequence-<br><br>*''Secretary'' means the Secretary of Labour Migration and* | Clause 2 of the proposed Bill as read together with Clauses 6, 7 & 8 of the Bill establishes the National Employment Authority and its Director General to superintend and administer the proposed Bill contrary to Sections 6 and 17 of National Employment Authority Act, 2016, thereby gravely creating a |

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| | *Management established under section 6 of the Act;* | functional overlap since the Director-General of NEA and the National Employment Authority are already provided for in a different statute. In the circumstances, the creation of the "Authority", "Director General" and the "Multi-Agency Committee on vetting of Private Employment Agencies" is ambiguous and creates positions which are already existing in law and a flagrant afront to the Constitution of Kenya, 2010 and other applicable laws. |
| | Delete the expression "private employment agency" | Private employment agencies are already provided for in other statutes as opined hereinabove. |
| | | |
| Clause 4 in the proposed Bill | Delete paragraph (a) in Clause 4 of the proposed Bill. | In light of the proposed changes, the application of the Act in Clause 4 of the proposed Bill ought to be modified to exclude "private employment agencies". |
| | | |
| Clauses 6 & 7 of the proposed Bill | Delete Clauses 6 & 7 in the proposed Bill and substitute therefor the following new Clauses-<br><br>***"Office of the Secretary of Labour Migration Management.***<br><br>*6. (1) There is established the Office of the Secretary of Labour Migration Management which shall be an office in the public service.* | Clauses 6 & 7 of the proposed Bill as enumerated above create provisions which are already legislated in other statutes and inextricably, superimposes the powers and functions of National Employment Authority in this Bill thereby undermining the basic structure of the new Act, if enacted into law.<br><br>The Secretary for Labour Migration Management is the administrator of the new Act, if |

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| | *(2) The Secretary shall be recruited through a competitive process by the Public Service Commission.*<br><br>*(3) A person may be appointed as the Secretary of Labour Migration Management if the Person-*<br><br>*(a) Is a citizen of Kenya;*<br><br>*(b) holds a relevant bachelors or masters' degree in social sciences from a university recognized in Kenya;*<br><br>*(c) has at least ten years' knowledge and experience in labour, labour migration, social work, administration, law, human resource or finance management; and*<br><br>*(d) meets the requirements of Chapter Six of the Constitution of Kenya, 2010.*<br><br>***Functions of the Secretary.***<br><br>*7. (1) The Secretary shall-*<br><br>*(a) coordinate labour migration management provide information, services and technical advice to* | enacted into law and not the Director General of the National Employment Authority in line with Executive Order No. 2 of 2023.<br><br>In the circumstances, the new Authority established in the proposed Bill is *ultra vires* the National Employment Authority Act, 2016 and the Constitution of Kenya, 2010. |

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| | | *the government, workers and employers organizations and other stakeholders on all labour migration management matters;* | |
| | | *(b) promote fundamental principles and rights at work for migrant workers;* | |
| | | *(c) implement national and international labour migration management policies and international jobs policy and related programmes;* | |
| | | *(d) monitor labour immigration and migration trends and related issues;* | |
| | | *(e) promote safe and orderly migration of labour migrants and develop programmes for re-integration for migrant workers;* | |
| | | *(f) promote and coordinate decent work programmes in relation to labour migration management;* | |
| | | *(g) undertake research and development on* | |

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| | *labour migration management matters and disseminate information on labour migration;*<br><br>*(h) promote and coordinate partnerships and cooperation on labour migration; and*<br><br>*(i) perform any other function as may be prescribed under this Act.*<br><br>*(2) In addition, the Secretary shall establish a migrant workers online portal, to among other things-*<br><br>*(a) facilitate the registration of migrant workers;*<br><br>*(b) provide access to finance, information, innovation and investments for the migrant workers;*<br><br>*(c) provide information on job opportunities outside the country;*<br><br>*(d) serve as a gateway to all migrant workers' services by the National and* | |

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| | *County Governments;*<br><br>*(e) provide information on clearances, approvals and registration requirements for migrant workers; and*<br><br>*(f) provide a platform for interaction between migrant workers and the National and County Governments, private institutions, investors and other relevant institutions.*<br><br>***Powers of the Secretary.***<br><br>***8.** The secretary shall have the power to do all such acts as the Secretary may deem to be necessary to carry out the functions of the Secretary and may appoint, assign or delegate a function to an officer or a person to carry out a function assigned under this Act.*<br><br>***Appointment of officers and other staff.***<br><br>***9.** The Public Service Commission shall competitively recruit such other officers as may be necessary to assist the Secretary in the* | |

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| | *performance of their duties under this Act."* | |
| | | |
| Clauses 8, 9 & 10 in the proposed Bill | Delete. | The proposed Bill attempts to regulate the Inter-Ministerial Committee on registration and vetting of Employment Bureaus and Agencies contrary to Sections 54A, 54B, 54C and section 56 (2) of the Labour Institutions Act, 2007 which establishes the Inter-Ministerial Committee on registration and vetting of Employment Bureaus and Agencies as espoused in the Security Laws (Amendment) Act (*No. 19 of 2014*). |
| | | |
| Clause 11(5) of the proposed Bill | Insert the words ''and the Cabinet Secretary'' immediately after the words ''head of mission'' in Clause 11 (5) of the proposed Bill | The Labour attaché reports to the head of mission and the responsible Cabinet Secretary for matters relating to Labour. |
| | | |
| Clauses 13, 14,16,17,18,19, 20, 21, 22, 23, 24,25, 26, 27 & 28 in the proposed Bill | Delete. | These provisions are *ultra vires* the express provisions of Employment Act 2007, the Labour Institutions Act No. 12 of 2007 and the National Employment Authority Act 2016.<br><br>Clauses 24, 25, 26, 27 and 28 attempt to amend by implication sections 83, 84, 85, and 86 of Employment Act (Cap 226) and section 3A of the Industrial Training Act (Cap. 237) of the laws of Kenya, contrary to the law and thereby inconsistent with main provisions of the Employment Act, 2007, |

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| | | the Industrial Training Act and the National Employment Authority Act 2016.<br><br>Attestation of foreign contracts are bestowed to labour officers under sections 83 & 84 of the Employment Act, 2007 and the exercise of those powers requires knowledge on general terms and conditions of employment.<br><br>Attestation issues are not devolved to the Counties under the Constitution of Kenya, 2010. |
| | | |
| Clauses 30, 35 & 36 in the proposed Bill | Delete the word "Authority" where it appears and substitute therefor with the word "Secretary". | This is in tandem with the new proposals for amendments in the Bill and to cure the inherent ambiguities. |
| | | |
| Clauses 39, 40 and 41 in the proposed Bill, | Delete. | This contradicts with other laws and a repetition since there exists the labour inspectorate in other labour laws under the express directions of the Commissioner for Labour. Resolution of labour complaints requires special knowledge and skill and is the domain of labour officers. |
| | | |
| Clauses 44 & 46 in the proposed Bill | Delete. | The architecture of proposed Bill is on labour migration management and cannot regulate Private Employment agencies. |
| | | |
| Clauses 51(2) in the proposed Bill | Delete paragraphs (i), (j), (k), (m), (n) and (p) in Clause 51 (2) of the proposed Bill. | Similarly, the proposed Bill is on labour migration |

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| | | management and cannot regulate Private Employment agencies. |
| | | |
| Clauses 52 & 53 in the proposed Bill | Delete. | Clauses 52 & 53 of the proposed Bill are ambiguous since the proposed Bill is neither an omnibus Bill nor an amendment Bill but an ordinary Bill. Further, any amendments to all labour laws must first get the concurrence and/or approval of the National Labour Board and the tripartite social partners and therefore the new Clauses are an affront to the Constitution of Kenya 2010 and other applicable laws. |
| | | |

Dated on the .....23rd.....day of .....October....., 2024.

**DR. ALFRED N. MUTUA, EGH**
*Cabinet Secretary, Ministry of Labour*
*and Social Protection*




OFFICE OF THE PRIME CABINET SECRETARY AND
MINISTRY OF FOREIGN AND DIASPORA AFFAIRS

# STATE DEPARTMENT FOR DIASPORA AFFAIRS

PRESENTATION TO THE
SENATE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

# BRIEF AND COMMENTS ON THE LABOUR MIGRATION BILL 2024

24TH OCTOBER, 2024 NAIROBI

# THE LABOUR MIGRATION MANAGEMENT BILL, 2024

## Introduction

To effectively promote and protect Kenya's national interests in the diaspora, there is a need to devise new strategies, guidelines and methods to manage the labour migration. This has therefore necessitated the drafting of the Labour Migration Management Bill. The draft Labour Migration Management Bill, 2024, is a proposed legislative framework aimed at regulating the recruitment of Kenyan workers for both domestic and international employment. The Ministry of Foreign and Diaspora Affairs has therefore prioritized its collaboration with the Ministry of Labour and Social Protection in the development of the Labour Migration Management Bill.

The Labour Migration Bill, 2024 is proposing the largest set of changes to the legal framework governing Kenya's labour migration. If enacted, the Labour migration management Bill would become the single law anchoring Migration of Kenyans to work abroad. As such, the draft legislation must be considered very carefully, comprehensively, and transparently.

The Bill is currently undergoing public participation and stakeholder involvement. The State Department of Diaspora Affairs is actively involved in collecting views from the Diaspora.

## Purpose of The Bill

The principal object of the Bill is to provide for the regulation of private employment agencies and the recruitment of workers within and outside Kenya and to safeguard the rights and welfare of job seekers and migrant workers. The Bill seeks to consolidate the laws relating to labour migration and proposes to repeal sections of the Labour Institutions Act, 2007 and the Employment Act, 2007.

## The bill seeks to achieve several key objectives:

(a) promote opportunities for decent employment.

(b) promote safe, fair, ethical, orderly and regular recruitment of workers; and

(c) safeguard and protect the rights and protect the welfare of migrant workers.

## Rationale for the Bill

The Bill seeks to solve the challenges faced by many Kenyan migrant workers both locally and in the countries of destination. Key amongst these challenges include: inadequate coordination of labour migration; 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 labour migration and migrant workers; weak cooperation and partnerships between countries and regions in international labour migration management; and lack of effective mechanisms for return and re-integration of migrant workers.

## The Role of The State Department for Diaspora Affairs under the Labour Migration Management Bill

The State Department for Diaspora Affairs, plays a pivotal role in managing and supporting Kenyan citizens living abroad, including migrant workers and implementing the Global Labour Market Strategy. The Labour Migration Management Bill, 2024 has further amplified its responsibilities, focusing on the protection, welfare, and reintegration of Kenyan migrant workers.

### a. Protection of Migrant Workers' Rights

The protection of migrant workers is a top priority for the State Department for Diaspora Affairs. The Bill includes several provisions aimed at safeguarding the rights and welfare of Kenyan migrant workers. It mandates the National Employment Authority (NEA) to monitor and regulate private employment agencies, ensuring that only vetted and approved agencies operate, reducing the risk of exploitation. Furthermore, the Bill mandates the establishment of Labour Attachés in Kenyan missions abroad, whose role is to vet destination employment conditions, monitor workers' welfare, and provide support in case of distress.

The bill also tasks SDDA with establishing safe houses in key labour destination countries, providing a secure environment for migrant workers in distress.

The Labour Migration Management Bill introduces mandatory pre-departure training, which will better equip migrant workers with the necessary skills and knowledge. This orientation will cover aspects such as contract management, the culture and laws of destination countries, and social media conduct, among others. Additionally, private employment agencies will be required to submit all foreign contracts of employment to the NEA for approval, ensuring they comply with Kenyan laws and the conditions of job orders.

The Migrant Workers Welfare Fund, as established by the Bill, will provide assistance for repatriation in cases where workers become unfit for employment or if they are mistreated. This will ensure that the financial burden of repatriation does not fall on the workers or their families. The Fund will also support workers' welfare in destination countries and their reintegration upon return to Kenya.

### b. Labour Migration Data Management

The State Department maintains a database of migrant workers who voluntarily register with our embassies, allowing us to monitor migration and provide tailored services. The voluntary nature of this process can however result in incomplete data.

The Bill therefore addresses these current gaps in data management by requiring the NEA to maintain a migrant workers portal and a national database. This portal will allow migrant workers to register their details and access essential services, helping the government track and manage labour migration trends more effectively. The introduction of mandatory registration of migrant workers, either before departure or within 90 days of employment abroad, will further enhance data accuracy, enabling better coordination and policy development.

The Labour Migration Management Bill will therefore mandate the registration of all outbound migrant workers through licensed recruitment agencies, ensuring more comprehensive and accurate data collection. This will allow the government to better respond to the needs of the diaspora, monitor employment conditions, and address any emerging issues more effectively.

### c. Regulation of Private Employment Agencies

One of the key provisions of the Labour Migration Management Bill is the regulation and accreditation of recruitment agencies. Over the years, unlicensed and unscrupulous agents have taken advantage of Kenyan workers, leading to cases of exploitation and abuse.

The Bill introduces stricter regulation of private employment agencies by requiring them to be vetted by a Multi-Agency Committee and execute a security bond to ensure compliance with foreign employment standards. This bond will cover the repatriation and other entitlements of workers in cases of exploitation or contract breaches. By tightening regulations around recruitment, we aim to eliminate fraudulent practices and reduce the number of cases of mistreatment of Kenyan workers abroad.

### d. Promoting Bilateral Labour Agreements

The State Department is actively involved in negotiating bilateral labour agreements with labour-receiving countries. These agreements are designed to ensure that the rights of Kenyan migrant workers are protected under the host country's laws, consistent with international standards. The State Department's role includes monitoring the implementation of these agreements, ensuring that the employment conditions agreed upon are adhered to, and addressing any violations of workers' rights.

### e. Diaspora Engagement and Investment

Beyond just labour migration, the Bill also tasks the State Department with encouraging Kenyan migrant workers to invest back home. The State Department will promote opportunities in key sectors and incentivizes investments that directly benefit both the migrants and the Kenyan economy.

## COMMENTS AND CONCERNS RAISED BY MEMBERS OF THE DIASPORA

### Migrant Workers Welfare Fund

The draft Labour Migration Management Bill, 2024, provides for the establishment of the Kenya Migrant Workers Welfare fund which seeks to provide protection and assistance to Kenyan migrant workers during migration, stay in destination country and return to the country.

This fund aims to provide vital protection, assistance, and welfare services for migrant workers and their families during migration, in their destination countries, and upon their return and re-integration. The fund also seeks to provide relief assistance to migrant workers, invalidity benefits, medical assistance, and survivor benefits where a migrant worker dies. Every migrant worker will be required to register as a member of the fund before departing the country for foreign employment. Contingency fees paid by private employment agencies will also be channeled to the fund. The implications of this fund are that Kenyan migrant workers will have access to much-needed support in times of crisis, ensuring that they are not left stranded or vulnerable when facing health-related issues or mistreatment from employers, particularly in regions such as the Gulf. The establishment of the migrant welfare fund will provide a safety net for Kenyan migrants, offering financial resources for emergency medical care, legal assistance, repatriation, and other forms of support.

This will alleviate the burden on families back home who have previously been forced to pool funds to bring their relatives back to Kenya in times of distress.

Overall, the migrant welfare fund represents a crucial step towards protecting the rights and well-being of Kenyan migrant workers and ensuring their dignity and security while working abroad.

The Kenyan diaspora have raised several concerns regarding the Migrant Workers Welfare Fund. A primary issue the mandatory contributions could place an additional financial burden on migrant workers, many of whom already face various fees for recruitment and other services. This concern is particularly acute for workers in lower-paying jobs, who may struggle to afford these contributions. Many members of the diaspora are questioning why the fund's contributions must be mandatory, suggesting that it could be made voluntary to better accommodate workers' varying financial circumstances.

Another significant concern is the lack of clarity on the specific benefits that the fund will offer. While the fund is intended to cover services such as repatriation, legal aid, and support in emergencies, many feel that the details of these benefits are vague.

**Proposed Amendments to the Labour Migration Amendment Bill**

a. Multi-Agency Committee Members

It is proposed that **Section 8 (2) (b)** which states 'the Principal Secretary responsible for matters relating to foreign affairs or his representative' to be amended to "the Principal Secretary responsible for matters relating to **diaspora affairs** or his representative"

b. Inclusion of the Diaspora Placement Agency

It is proposed that the Diaspora Placement Agency be included in the Bill. Including the Diaspora Placement Agency (DPA) in the Labour Migration Management Bill is crucial for enhancing Kenya's labour migration framework and promoting the country's workforce globally. The DPA plays a vital role in positioning Kenya as a leading labour market brand, marketing Kenyan talent to foreign employers, and providing detailed information on labour demographics. These efforts not only create more opportunities for Kenyan workers but also ensure that the country's workforce is well-represented in international markets. By negotiating with foreign employers for the placement of Kenyan workers, the DPA safeguards the interests of migrant workers, ensuring fair contracts and ethical treatment, which aligns with the Bill's aim of protecting workers abroad.

The inclusion of the Diaspora Placement Agency in the Labour Migration Management Bill strengthens the government's ability to manage labour migration efficiently, ensuring that Kenyan workers are protected and well-prepared for employment abroad. The DPA's role in marketing Kenya's workforce, negotiating fair employment terms, providing essential pre-migration services, and fostering economic engagement makes it an essential component of the labour migration framework. By centralizing these functions under a government agency, the Bill ensures greater transparency, accountability, and support for Kenyan workers in the global labour market.

The functions of the DPA include;

a) Position Kenya as a leading labour market brand globally;

b) Introduce and market Kenya's talent to foreign employers and markets.

c) Provide information on Kenya's labour demographics;

d) Negotiate with foreign employers for the placement of Kenyans;

e) Seek job opportunities globally and update listings;

f) Provide a database of available skills;

g) Offer information on foreign labour markets;

h) Facilitate pre-migration training in preparation for foreign employment;

i) Facilitate preparation of documents and visa interviews;

j) Provide a system for workers' registry;

k) Intensify public information on available resources; and

l) Monitor global markets and conduct market research.

m) Diaspora Placement Agency (DPA) will also collaborate with other relevant stakeholders to ensure the participation of the Kenyan diaspora in the country's democratic processes;

n) Develop frameworks to incentivize diaspora remittances, and economic engagement by harnessing diaspora savings, facilitating Foreign Direct Investments (FDI), and promoting technology transfers.

c. Diaspora attaches

The inclusion of Diaspora attachés in the Bill is proposed. The Diaspora Attaché will serve as an essential advocate and protector of Kenyan workers' interests abroad, in line with the objectives of the Labour Migration Management Bill. The diaspora attaché will perform the following functions;

i) Offer support and advocacy for migrant workers in the host country
ii) Promote employment opportunities for Kenyan workers in host countries
iii) Monitor work conditions of migrant workers
iv) Collect and report data on the Kenyan migrant workers
v) Promoting Awareness of Migrant Rights
vi) Promote the implementation of Bilateral Labour Agreements between Kenya and the Host Country
vii) Coordinate repatriation and support for workers in distress
viii) Oversee the supervision of safe houses
ix) Provide periodic reports and advice to the State Department for Diaspora Affairs on the state of Kenyan workers in their host country
x) Assist in facilitating their re-integration programs

## Conclusion

The National Assembly should prioritize this legislation as investing in the well- being and economic empowerment of migrants will have positive economic impacts, as migrants who are economically self-sufficient are better able to contribute to Kenya's economy through remittances.

Therefore, by approving the bill, parliament can demonstrate its commitment to promoting the well-being of all members of society and fostering sustainable economic development for the future.

(8)

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Website: www.mfa.go.ke
When replying please quote Ref. No. and date

316 Upper Hill Chambers
P.O. Box 30551 - 00100
NAIROBI, Kenya

THE SENATE RECEIVED 29 OCT 2024 CLERK'S OFFICE SENATE

**MINISTRY OF FOREIGN AND DIASPORA AFFAIRS**
STATE DEPARTMENT FOR DIASPORA AFFAIRS

MFDA. SDDA/LEG/VOL 2 (77) 24th October 2024

Ref. No.....

Mr. Jeremiah M. Nyegenye, CBS
Clerk of the Senate
Parliament Buildings,
P.O Box 41842-00100
NAIROBI

THE SENATE RECEIVED 29 OCT 2024 DIRECTOR COMMITTEE SERVICES (DGAC)

(1) DSEC
Kindly deal
29/10/2024

Dear Hon. Clerk,

**RE: STAKEHOLDER ENGAGEMENT ON THE LABOUR MIGRATION MANAGEMENT (NO. 2) BILL, 2024 (SENATE BILLS NO.42 OF 2024)**

Reference is made to your letter dated 14th October 2024, Ref: SEN/DSEC/DISSC/SCLSW/2024/146, in respect to the stakeholder engagement on Labour Migration Management Bill, 2024, before the standing committee on Labour and Social Welfare.

The State Department for Diaspora Affairs, plays a pivotal role in managing and supporting Kenyan citizens living abroad, including migrant workers and implementing the Global Labour Market Strategy. The Labour Migration Management Bill, 2024 and has further amplified its responsibilities, focusing on the protection, welfare, and reintegration of Kenyan migrant workers.

The protection of migrant workers is a top priority for the State Department for Diaspora Affairs. The Bill includes several provisions aimed at safeguarding the rights and welfare of Kenyan migrant workers It mandates the National Employment Authority (NEA) to monitor and regulate private employment agencies, ensuring that only vetted and approved agencies operate, reducing the risk of exploitation. Furthermore, the Bill mandates the establishment of Labour Attachés in Kenyan missions abroad, whose role is to vet destination employment conditions, monitor workers' welfare, and provide support in case of distress.

The bill also tasks SDDA with establishing safe houses in key labour destination countries, providing a secure environment for migrant workers in distress.

THE SENATE RECEIVED 30 OCT 2024 DIRECTOR COMMITTEE SERVICES (DSEC)

(3) Ms. Musaade
Kindly deal
Kobath
31/10/2024

(2) DSEC (VK)
Kindly deal
30/10/2024

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The State Department maintains a database of migrant workers who voluntarily register with our embassies, allowing us to monitor migration and provide tailored services. The voluntary nature of this process can however result in incomplete data.

The Bill therefore addresses these current gaps in data management by requiring NEA to maintain a migrant workers portal and a national database. This portal will allow migrant workers to register their details and access essential services, helping the government track and manage labour migration trends more effectively. The introduction of mandatory registration of migrant workers, either before departure or within 90 days of employment abroad, will further enhance data accuracy, enabling better coordination and policy development.

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One of the key provisions of the Labour Migration Management Bill is the regulation and accreditation of recruitment agencies. Over the years, unlicensed and unscrupulous agents have taken advantage of Kenyan workers, leading to cases of exploitation and abuse.

The Bill introduces stricter regulation of private employment agencies by requiring them to be vetted by a Multi-Agency Committee and execute a security bond to ensure compliance with foreign employment standards. This bond will cover the repatriation and other entitlements of workers in cases of exploitation or contract breaches. By tightening regulations around recruitment, we aim to eliminate fraudulent practices and reduce the number of cases of mistreatment of Kenyan workers abroad.

The State Department is actively involved in negotiating bilateral labour agreements with labour-receiving countries. These agreements are designed to ensure that the rights of Kenyan migrant workers are protected under the host country's laws, consistent with international standards. The State Department's role includes monitoring the implementation of these agreements, ensuring that the employment conditions agreed upon are adhered to, and addressing any violations of workers' rights.

Beyond just labour migration, the Bill also tasks the State Department with encouraging Kenyan migrant workers to invest back home. The State Department will promote opportunities in key sectors and incentivizes investments that directly benefit both the migrants and the Kenyan economy.

This legislation should be prioritized as investing in the well- being and economic empowerment of migrants will have positive economic impacts, as migrants who are economically self-sufficient are better able to contribute to Kenya's economy.

In order to enrich the contents of the Private Member's Bill sponsored by Hon. Senator Mutinda Maureen Tabitha, attached herewith, please find a comprehensive matrix of our proposals and views, as annexed and set out hereunder.

I thank the leadership of the standing committee on Labour and Social Welfare for allowing us to make our presentation to this Bill and look forward to more engagements in the near future.

Yours sincerely,

Roseline Kathure Njogu, CBS
**PRINCIPAL SECRETARY**

Copy to:

**H.E Hon Dr. Musalia Mudavadi, EGH**
Prime Cabinet Secretary and Cabinet Secretary for
Foreign and Diaspora Affairs
**NAIROBI**

MINISTRY OF FOREIGN & DIASPORA AFFAIRS
STATE DEPARTMENT FOR DIASPORA AFFAIRS

## MATRIX ON PROPOSED AMENDMENTS TO THE LABOUR MIGRATION & MANAGEMENT (NO.2) BILL, 2024

| CLAUSE(S) | PROPOSED AMENDMENTS | JUSTIFICATION |
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| Clause 8 (2) (b) | Delete the words "foreign affairs" and substitute with "diaspora affairs" | The State Department for Diaspora Affairs is mandated to liaise with the Ministry of Labour in implementation of the Labour Migration Policy as well as the Global Labour Strategy. Therefore, the Principal Secretary responsible for Diaspora Affairs is well-fitted to being a member of the multi-agency committee. |
| Clause 12 (1) & 12 (2), Clause 11 | Insert the words "and diaspora" immediately after the words "relating to foreign" | The appropriate title for the Cabinet Secretary is the Cabinet Secretary for Foreign and Diaspora Affairs. |
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Dated on the……..……..day of……..……..2024

**Roseline Kathure Njogu, CBS**
Principal Secretary,
State Department for Diaspora Affairs

Telephone; +254-20-4949812
Email: communications@diaspora.go.ke
Website: www.mfa.go.ke
When replying please quote Ref. No. and date

316 Upper Hill Chambers
P.O. Box 30551 - 00100
NAIROBI, Kenya

29 OCT 2024
CLERK'S OFFICE
SENATE

**MINISTRY OF FOREIGN AND DIASPORA AFFAIRS**
STATE DEPARTMENT FOR DIASPORA AFFAIRS

MFDA. SDDA/LEG/VOL 2 (77) 24th October 2024

Ref. No.....

Mr. Jeremiah M. Nyegenye, CBS
Clerk of the Senate
Parliament Buildings,
P.O Box 41842-00100
NAIROBI

THE SENATE
RECEIVED
29 OCT 2024
DIRECTOR COMMITTEE SERVICES

DSEC
Kindly Deal
29/10/2024

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Yours sincerely,

Roseline Kathure Njogu, CBS
**PRINCIPAL SECRETARY**

Copy to:

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Prime Cabinet Secretary and Cabinet Secretary for
Foreign and Diaspora Affairs
**NAIROBI**

MINISTRY OF FOREIGN & DIASPORA AFFAIRS
STATE DEPARTMENT FOR DIASPORA AFFAIRS

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Dated on the……..……..day of……..……..2024

**Roseline Kathure Njogu, CBS**
Principal Secretary,
State Department for Diaspora Affairs

THE SENATE
RECEIVED
17 OCT 2024
DIRECTOR COMMITTEE SERV
(DSEC)

# COUNCIL OF GOVERNORS

OFFICE OF THE CLERK-SENATE
SECRETARY
16 OCT 2024
PSC
P.O. Box 41842 - 00100, NAIROBI

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

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E-mail: info@cog.go.ke

Our Ref: COG/6/46 Vol.5 (38)

14th October, 2024

THE SENATE
RECEIVED
17 OCT 2024
DEPUTY CLERK

**J.M. Nyegenye, CBS**
The Clerk of the Senate
Parliament Buildings
**Nairobi**

Dear Mr. Nyegenye,

**LEGISLATIVE MEMORANDUM ON THE LABOUR MIGRATION AND MANAGEMENT BILL (SENATE BILLS NO. 42 OF 2024)**

Greetings.

The Council of Governors has reviewed the **The Labour Migration and Management Bill (Senate Bills No. 42 of 2024)** and hereby forwards its legislative memorandum attached herewith for your consideration.

Please accept the assurance of our highest esteem and consideration.

Yours sincerely,

**Mary Mwiti**
**Chief Executive Officer**

① DLG
DSEC

② DDSEC (VK)
Kindly deal
17/10/2024

3. Ms. Mwanate
Kindly deal.
Mobati
17/10/2024

Kindly deal.
17/10/2024

COUNCIL OF GOVERNORS

# MEMORANDUM

**BY**

**THE COUNCIL OF GOVERNORS ON THE LABOUR MIGRATION AND MANAGEMENT BILL (SENATE BILLS NO. 42 OF 2024)**

**TO**

**THE SENATE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE**

**ON**

**25th September, 2024**

The Council of Governors,

**In recognition** of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

**In further recognition** of Article 6 (2) that governments at the national and county levels are distinct;

**Aware** of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution; and

**Further aware** that the Labour Migration And Management Bill (Senate Bills No. 42 Of 2024) (hereinafter "**the Bill**") mandates the national government to consult county governments in creation of registers and investment opportunities for migrant workers hence affecting the functions of county governments in terms of developmental planning under paragraph 8 of Part 2 of the Fourth Schedule of the Constitution.

The Council wishes to give its general comments to the Bill as follows: -

i. We note that the Bill presupposes enactment of Regulations to operationalize it. We note that there is need for strict compliance to performance standards for employment agencies to qualify for registration. This will ensure fairness and transparency and uphold a merit-based system.

ii. With respect to Conditions for Registration, we note that beyond financial capacity, quality and ethical standards should be integral to the registration criteria. Registered agencies must undergo annual financial and ethical audits and maintain a minimum placement success rate to continue with their registration as this will protects workers from fraudulent practices.

**SPECIFIC COMMENTS**

The Council wishes to give its specific comments to the Bill as follows: -

| Clause of the Bill | Provision of Clause in the Bill | Proposed Amendment | Rationale/Justification for Amendment |
|---|---|---|---|
| **PART I: PRELIMINARY** | | | |
| Clause 3: **Objects of the Act** | **Objects of the Act** | **Amend to Insert the following:**<br>Incorporate skill-based recruitment to promote transparent and ethical overseas employment. | The clause emphasizes procedural protections without highlighting the importance of skill-based recruitment. Prioritize strict skill level assessments before deployment, enhancing both worker welfare and deployment effectiveness |
| Clause 5: **Conditions for Deployment of Migrant Workers** | (1) The Government shall deploy migrant workers to Countries where the rights of migrant workers are protected | **Amend to Insert the following:**<br>(1) The Government shall deploy migrant workers to Countries where the rights of migrant workers are protected **and deployment shall be contingent upon meeting specific skill and qualification criteria.** | Skill certifications and pre-agreed wages can prevent exploitation and ensure that only qualified workers are deployed, fostering a merit-based approach. |
| **PART II: ADMINISTRATION OF THE ACT** | | | |
| Clause 6: | Functions of the Authority | **Amend to Insert the following:**<br>Conduct periodic third-party audits and merit-based performance | Introduction of third party audits strengthens governance within the Authority as it will allow the Authority to undergo regular third-party audits and implement merit-based |

| Clause of the Bill | Provision of Clause in the Bill | Proposed Amendment | Rationale/Justification for Amendment |
|---|---|---|---|
| | | reviews of its operation sunder the Act to ensure transparency and effectiveness. | performance evaluations to uphold the highest standards of transparency and integrity in its operations. |
| 2. Clause 13: | Role of County Governments | **Amend to Insert the following:**<br>Establish local labor advisory boards within counties to oversee merit-based recruitment and training. | The County Labor Advisory Boards will be responsible for implementing merit-based recruitment strategies and providing localized training programs to augment worker competencies.<br>Decentralized models offer equitable participation across regions to ensure that local governments effectively contribute to a labor migration framework. |
| **PART IV — PRE-DEPARTURE PROCEDURE FOR FOREIGN EMPLOYMENT** | | | |
| Clause 28: | Pre-departure Orientation | **Amend to Insert the following:**<br>Introduce a tiered orientation programs tailored to different skill levels to provide advanced training for high-skill workers and essential information for low-skill workers. | Comprehensive and tiered training modules guarantees that the trainings are relevant and effective and that the workers are informed adequately. |
| Clause 30: | Foreign Contracts of Employment | **Amend to Insert the following:**<br>The Authority shall ensure independent oversight or worker representation during contract negotiations to promote merit-based agreements. | Independent oversight permits for county-level oversight to ensure contracts adhere to both national and local standards, respecting the devolution principle.<br>All foreign employment contracts to include independent oversight and representation of |

| Clause of the Bill | Provision of Clause in the Bill | Proposed Amendment | Rationale/Justification for Amendment |
|---|---|---|---|
| | | | workers to confirm that recruitment is based on merit and free from favoritism or bias and to enhance contract integrity and excellence in recruitment. |
| **PART V — ENFORCEMENT** | | | |
| Clause 38: | Appointment of Inspectors | **Amend to Insert the following:**<br>Provided that County Governments shall be involved in appointing inspectors where necessary.<br>Expand the inspectors' role to include performance-based oversight. | Allowing county governments to appoint local inspectors supports and respects the principle of devolution.<br>Merit-based recruitment for inspectors guarantees objectivity and integrity. Inspectors to be recruited based on merit, including relevant qualifications and performance history, to ensure unbiased and effective enforcement of the Act |

**National Gender and Equality Commission**
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OFFICE OF THE CLERK-SENATE
SECRETARY
15 OCT 2024
PSC
P.O. Box 41842 - 00100, NAIROBI

NATIONAL GENDER AND EQUALITY COMMISSION

**NGEC/CS/SEN/VOL. I (22)** **14th October, 2024**

THE SENATE
RECEIVED
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DIRECTOR COMMITTEE SERVICES
(DGAC)

**J. M. Nyegenye, CBS**
Clerk of the Senate
Clerk's Chambers
Parliament Building
P. O. Box 41842-00100
**NAIROBI**

*clerk.senate@parliament.go.ke*

CC: laboursocialwelfarecomm.senate@parliament.go.ke

1) DLS
DSEC
Kindly deal
15/10/2024.

3) Mr. Mwanate
Kindly deal:
16/10/2024

2) DDSEC (VK)
Kindly deal
15/10/2024

Dear Mr. Nyegenye,

**SUBMISSION OF THE MEMORANDA ON THE LABOUR MIGRATION AND MANAGEMENT BILL (SENATE BILLS NO 42 OF 2024)**

Reference is made to your call for the submission of memoranda on the Labour Migration and Management Bill.

Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 2011, mandates the Commission to; '*monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions*;

In line with its mandate, the Commission presents to you a memoranda analyzing the proposed draft Bill and making proposals for amendment where necessary.

Yours

Purity Ngina, **PhD**
**COMMISSION SECRETARY/ CEO**

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*"Gender Equality and Non-Discrimination"*




## MEMORANDA: THE DRAFT LABOUR MIGRATION MANAGEMENT BILL

| S -No | Clause | Provisions of the clause | Proposed Amendment | Rationale |
|---|---|---|---|---|
| 1. | Title | **THE LABOUR MIGRATION MANAGEMENT BILL, 2024**<br><br>AN ACT of Parliament to provide for the regulation of private employment agencies and the recruitment of Kenyans to work within and outside Kenya; to safeguard the rights and welfare of job seekers and migrant workers; and for connected purposes | Propose to amend the Title of the proposed Bill by deleting the phrase "within" after the phrase "work"<br><br>Propose further to insert after the term "workers" the following-;<br><br>"to establish the Kenya Migrant Workers Welfare Fund" | There is already in place a legal framework that regulates the recruitment of Kenyans within Kenya, including the Employment Act and the National Employment Authority Act. Clause 3 on objects and 4 on application of the Act is also specific that it is about migrant labour<br><br>The memorandum of objects and reasons states that Part VI of the Bill provides for miscellaneous matters such as the establishment of the Migrant Workers Welfare Fund under the Public Finance Management Act. However the provision has not been provided for in the provisions and needs to be captured and we will propose the same in this memoranda in serial no 8 below |

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| 2. | **Clause 11**<br><br>**Clause 48** | Labour Attaches -Functions<br><br>(m) facilitate the provision of counseling services to migrant workers;<br>(n) supervise and co—ordinate the operations of safe houses for migrant workers in that country:<br><br>**Safe houses**<br>48. The Cabinet Secretary for matters relating to foreign affairs shall establish safe houses in labour destination countries to provide temporary holding for migrant workers in distress. | The commission is concerned on whether the attaches will be in a position to execute the two functions highlighted and also whether the government will be in a position to establish its own safe houses in a foreign country.<br><br>**Proposal**<br><br>The commission proposes for safe spaces to be established within the premises of the Kenyan Offices and the office to train and equip its workers with counselling skills. | There have been many cases of Kenyan migrant workers and specifically women who have found themselves in very distressing conditions and the Kenyan offices in those countries have not been of useful assistance to them.<br><br>Establishing safe houses and equipping them and employing personnel has financial implications. |
| 3. | **Clause 26** | **Clause 26**<br>**Code of conduct for private Employment agencies**<br><br>26. The Authority may prescribe a code of conduct for private employment agencies. | Propose to amend by substituting the phrase "may" with "shall" | "May" denotes discretionary. The use of "shall" is mandatory given the many cases of misconduct and deception that are on the rise by employment agencies |
| 4. | **Clause 34** | **Registration of migrant workers.**<br><br>34. (I) A person who intends to travel to another country for purposes of foreign employment shall apply to the Authority for registration. | The Commission proposes to substitute the phrase "shall" in 34(1) with "may"<br><br>The Commission further proposes the deletion of sub clauses 34(4) and (5) without replacement | The Commission is of the opinion that it should not be mandatory for migrant workers to register themselves. It should be voluntary and discretionary for those who wish to be protected by the Government. |

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| | | (2) The application for registration under subsection (I) shall be accompanied by an attested foreign contract of employment.<br>(3) The Authority shall, upon reviewing the application under subsection (l) —<br>(a) record the particulars of the worker in the prescribed manner; and<br>(b) subject to the fulfilment of all requirements relating to migration, issue a clearance certificate to the migrant worker.<br>(4)A migrant worker who is not registered under subsection (l) shall register with the Kenya mission in the country where the worker is employed within ninety days of employment.<br>(5) A person who contravenes sub section (I) or (4) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three months. | | Specifically, 34(5) is not capable of being implemented because the unregistered worker is outside the jurisdiction of the Kenyan Courts and so the penalties as prescribed are of no consequence<br><br>Clause 37(f) is clear that the provisions exempt anyone emigrating at self-initiative for in a foreign country.<br><br>The worker whether emigrating through an Agency or self- initiated has the right to choose whether they want to be registered or want their data to be private for their own known reasons and should not be coerced. The worker will have recused themselves willingly from the protection of the government. |
| **5.** | **Clause 42** | **Repatriation of migrant workers**<br><br>2) Repatriation of the remains and personal belongings of a deceased migrant worker shall | The Commission is of the opinion that repatriating the remains of a deceased worker is not respectively the obligation of the | The Commission has some proposed provisions on the welfare Fund in serial No 7 below.<br>The issue to be considered is when the contract between the Agency |

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| | | be facilitated by the private employment agency in collaboration with the employer within one month of the death of the migrant worker, | employment agency nor the employer.<br><br>The Bill makes mention of the welfare fund which shall be a contributory fund and so we propose to substitute the phrase " private employment agency in collaboration with the employer" with the "Welfare Fund" | and the worker ends. Is it perpetual? The agency may also be de-registered or willingly close.<br><br>And as for the Employer, under what authority will they be required or even forced to repatriate the worker's body? |
| **6.** | **Clause 43** | **Bilateral labour agreements**<br><br>43. (l) The national government may conclude a memorandum of understanding, a bilateral labour agreement or any other instrument with another country | Propose to substitute the phrase "may" with "shall" | If the object of the proposed law is to safeguard the rights and welfare of the Migrant workers then the government is obligated to enter into /sign agreements and not leave it as discretionary to do so |
| **7.** | **Part VI** | **Miscellaneous provisions**<br><br>Proposed new provision on welfare fund | The Commission proposes the Establishment of **a Migrant workers welfare Fund as follows-;**<br><br>42(A) The Cabinet Secretary shall establish a fund to be known as The Kenya Migrant workers welfare Fund<br>(A) (i) The Fund shall be administered by the National Employment Authority<br>(A)(ii). The Fund shall be a contributory fund by the government, the employment Agencies and the migrant workers. | |

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| | | | (A)(iii). The purpose of the fund shall be to cater for all the welfare of the migrant workers in distress<br>(A)(iv) The Cabinet Secretary shall prescribe Regulations for the better management of the Fund. | |

**General comments**

The Commission lauds the process of putting in place a legal framework to regulate labour migration given the rise in abuses against the special interest groups workers in foreign countries. The Commission has made its observations on the proposed Bill and especially on the establishment of safe houses and the welfare fund.

The Commission also looks forward to the state ratifying the Domestic Workers Convention 2011 C ILO No 189 which will ensure the rights of migrant domestic workers will be upheld in corresponding member States.

32 (Nov (1)

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(DSEC)

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# NATIONAL INTELLIGENCE SERVICE


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THE DIRECTOR GENERAL,
P. O. BOX 30091 – 00100,
NAIROBI,
KENYA.


NIS-DG-1 VOL.16 (61)

1) DSEC
DKG
Kindly deal.
E 18/11/2024

14th November, 2024

**The Clerk of the Senate,**
Parliament Buildings,
P.O. Box 41842-00100,
**Nairobi.**

2) KDIRCEC (VK)
Kindly deal
19/11/2024

**THE LABOUR MIGRATION MANAGEMENT BILL, 2024**

The above subject matter refers.

Attached, for further necessary action, kindly find the review report.

The Service avails itself to this opportunity to thank and assure you of continued collaboration.

3) Ms. Mwanate
Kindly deal.
Mobach
19/11/2024

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18 NOV 2024
DEPUTY CLERK

**M. K. ROTICH, MBS**
**For: DIRECTOR GENERAL**

**Encl.**

SECRET

## THE LABOUR MIGRATION MANAGEMENT BILL, 2024 HIGHLIGHTS

The Bill is intended to be enacted into an Act that will ***provide for the regulation of private employment agencies and the recruitment of workers within and outside Kenya and to safeguard the rights and welfare of job seekers and migrant workers***. The Bill also seeks to consolidate the laws relating to labour migration and proposes to repeal sections of the Labour Institutions Act, 2007 and the Employment Act, 2007.

The ***objective of the Act*** is to: promote safe, fair, ethical and orderly recruitment of workers; protect the rights of job seekers; enhance coordination of labour migration governance in Kenya; enhance transparency and flexibility in labour migration; promote overseas employment; protect the human and labour rights and promote the welfare of Kenyan migrant workers; maximize participation of Kenya migrant workers in the economic development; promote equal treatment of foreigners' migrant workers in Kenya who are lawfully engaged in employment; provide a framework for collection, analysis and use of data and information on labour migration and labour migrants and promote opportunities for employment.

A ***migrant worker*** refers to a Kenyan citizen who intends to migrate for work; is departing to any foreign country for work or is employed in any foreign country. In section 5 of the Bill the government is to deploy migrant workers to countries where the rights of migrant workers are protected. The government is to recognise any of the following measures as a guarantee by the receiving country for the protection and the rights of migrant workers; existing labour and social laws protecting the rights of migrant workers; signatory to multilateral conventions, declarations or resolutions relating to the protection of migrant workers and; existing bilateral agreement or arrangement with the government protecting the rights of migrant workers.

The ***National Employment Authority as established under the National Employment Authority Act, 2016 is the Authority responsible in the Act.*** The ***functions of the Authority*** will be to register and regulate private employment agencies; develop predeparture programmes for migrant workers; monitor the implementation of the predeparture orientation programmes; identify and create awareness on employment opportunities in any foreign country and facilitate access to the opportunities by migrant workers; verify and approve job orders emanating

from private employment agencies; collect, analyse and disseminate data on foreign employment; develop and implement programmes necessary to safeguard the rights and welfare of migrant workers develop and implement a return and reintegration programme for migrant workers; receive and investigate complaints from migrant workers, job seekers, private employment agencies or any person and; create public awareness on safe, regular and orderly labour migration.

There is a ***Multi-Agency Committee on Vetting of Private Employment Agencies to be established in section 8*** that shall consist; the Principal Secretary responsible for matters relating to labour or his (representative; the Principal Secretary responsible for matters relating to foreign affairs or his representative; the Commissioner for Labour; a representative of private employment agencies nominated by the largest and most representative association of private employment agencies and appointed by the Cabinet Secretary; the Director of Criminal Investigations or his representative the Director General of the National Intelligence Service or his representative; the Director of Immigration or his representative and; the Director General (National Employment Authority); The Principal Secretary responsible for labour or; his representative shall be the chairperson of the Committee; The Director General will be the Secretary to the Committee and shall have no voting rights. The Authority shall be the secretariat to the Committee.

Section 11 provides for a ***labour attaché*** to be appointed by the Cabinet Secretary to serve in each Kenyan mission after consulting with the Cabinet Secretary of Foreign Affairs. The labour attaché is to: seek employment opportunities for Kenyans in that country; authenticate job orders; attend to complaints relating to migrant workers in that country; visit workplaces and workers accommodation facilities to assess working and living; monitor the implementation of Bilateral Labour Agreements; monitor the welfare of migrant workers and promote awareness to minimize on violation of their rights; collect and collate labour migration data and statistics on Kenyan migrant workers in that country; provide labour market information to migrant workers; analyze and advise the Cabinet Secretary on the demand for foreign labour in the respective country; attest foreign contracts of employment; monitor situations and labour policy developments in the host country that may affect migrant workers; facilitate the provision of counselling services to migrant workers; supervise and coordinate the operations of safe houses for migrant workers in that country; submit

to the Cabinet Secretary an annual report and recommendations relating to the conditions of migrant workers working in that country and; perform any other function as may, from time to time, be assigned by the Cabinet Secretary.

The above mentioned ***annual report*** contains: A list of migrant workers, with names of trades and professions they are employed in, their working conditions, benefits and challenges, if any; a list of cases brought against migrant workers, if any, and details thereof, and information about workers detained or convicted of any offence; a list of the migrant workers in distress, the nature of distress and any assistance or services offered by the Kenya mission or the steps taken to resolve counselling and legal assistance; an estimate of the job opportunities for migrant workers in the respective country; the status of the implementation of any existing bilateral agreement regarding the rights of migrant worker in the respective country and any other matter as maybe specified by the Cabinet Secretary from time to time.

Section 12 provides that the ***roles of Cabinet Secretary for Labour and Foreign Affairs*** include: developing and implementing strategies for migrant workers to participate in the development process; developing measures to enhance the safety and security of migrant workers; developing and implementing mechanisms for engagement with migrant workers and establishing an administrative and institutional framework for the coordination of matters relating to migrant workers.

Section 15 provides for ***the establishment of a voluntary savings scheme*** for migrant workers. The Cabinet Secretary responsible for matters relating to foreign affairs shall in consultation with the relevant Kenyan mission promote the establishment of the scheme.

Section 16 provides that the Authority shall ***establish a migrant workers online portal*** whose function shall be to; facilitate the registration of private employment agencies; facilitate the registration of migrant workers; provide details of all registered private employment agencies provide platform for interaction between the migrant workers and the National and county governments, private institutions, investors, and other relevant institutions; provide access to finance, information, innovation, and investments for the migrant workers; provide information on job opportunities outside the country; provide information on clearances, approvals and registration requirements for migrant workers; receive complaints and recommendations from

migrant workers industry stakeholders and the general public; serve as a gateway to all migrant workers' services by the national and county governments.

Section 17 provides that ***all private agencies are to be registered***. The ***fine for failing to register is Kenya Shillings 10 million, or imprisonment for 10 years or both***. One is to apply to the Director General. The agencies are to be incorporated under Companies Act or Partnerships Act.

Section 20 provides that every private employment agency that is engaged in the recruitment of workers for foreign employment shall, upon receiving a notification of approval and notification of payment from the Director General, ***execute a security bond*** as prescribed by the Cabinet Secretary with a bank or an insurance company registered and licensed in Kenya. The security bond shall be valid for one year and shall run concurrently with the validity period of the certificate of registration and shall be used for the purpose of repatriation and other entitlements in the event of default by the private employment agency or the employer and shall not be sourced from the capital of the private employment agency.

Section 25 provides that ***a private employment agency shall submit every job order to the Authority for approval***; a job order for foreign employment shall be attested by the relevant Kenya mission and thereafter submitted by the private employment agency to the Authority for approval. The Authority is not to approve a job order unless the terms and conditions of employment are compatible with the minimum Kenyan statutory requirements. In section 26, private entities can only issue ***advertisements for employment*** approved by the Authority within their premises, through a public office or the media. The Authority can refuse to issue advertisements for the reasons that the nature of employment for which persons are to be recruited is degrading or inhuman; the terms and conditions offered to the workers are not satisfactory; the lives of workers would be endangered by reason of civil war or political disturbances in the country in which they are to be employed; the health and safety of the workers would be endangered; or the requirements prescribed in regulations have not been complied with. ***The penalty for the offence contravened in this section amounts to a fine not exceeding Ksh. 500,000 or imprisonment not exceeding 1 year or both.***

A private employment agency under section 28 is ***required to keep and maintain an up to date register of recruited workers*** and provide this to the Authority as and when required, provide the contract of employment to the migrant worker at least fourteen days before the date of departure; ensure that a contract of employment complies with the provisions of any relevant written law, bilateral labour agreements and memoranda of understanding between Kenya and the countries of destination; keep and maintain any record which, by regulations made under this Act, is required to be kept for a period of three years subsequent to the occurrence of the event recorded; notify the Authority of any migrant worker who is in distress; inform the Authority in writing of any change in the particulars stated in the application for a certificate of registration within thirty days of such change and; file such returns as may be prescribed in regulations. Further, a private agency is not to charge or receive in respect of anything done or to be done at an employment agency a fee at a higher than prescribed rate, unless a provision has been made for charging such fees. ***The penalty for infringing this section amounts to a fine not exceeding Ksh. 1 million or imprisonment of a term not exceeding 2 years or both.***

Section 29 provides ***for departure orientation*** for anyone who desires to travel to another country for purposes of foreign employment. In section 30, The Authority together with the National Industrial Training Authority (Established under section 3 of the Industrial Training Act) shall develop a curricula that will include contract management; the culture and laws of the countries of destination; social media management; attitudes on customer service; languages of the countries of destination; assessment of migrant workers' skills; certification of migrant workers' skills; training, assessment and certification of homecare and; financial literacy.

Section 31 provides for the ***Foreign Contracts of employment*** and that the same shall be signed by the parties and attested by a labour officer (appointed under section 30 of the Labour Institutions Act, 2007). A private employer agency is to be considered a representative of the foreign employer and is liable for any liabilities that may arise. A migrant worker recruited under a government-to-government arrangement shall have their foreign contract of employment attested in accordance with this Act.

Section 32 provides a foreign contract is to be attested by a labour officer when satisfied that the private employment agency is registered with the Authority; the private employment agency has executed a security bond; the employee has not been

induced to enter into the contract through fraud, coercion, undue influence, mistake of fact or misrepresentation; the terms and conditions of employment contained in the contract comply with approved job orders and the provisions of the employment laws; the employee is medically fit for the performance of the duties stipulated in the contract and a medical certificate in the prescribed form has been given to the attesting labour officer in respect of that employee; the employee is not bound to serve under any other contract of employment during the period provided in the foreign contract of employment and; the employee has undertaken pre departure orientation. The employee is to appear in person for attestation.

Section 34, ***one who induces a migrant worker*** to proceed for employment abroad under an informal contract is ***liable to a fine not exceeding Ksh. 2 million or imprisonment of a term not exceeding 2 years or both***. In section 35, a migrant worker who intends to go to another country for employment shall apply to the Authority for registration. One not registered shall register with the Kenyan mission in the country where the worker is employed within 90 days of employment. Anyone who contravenes is ***liable to a fine not exceeding Ksh. 100,000 or imprisonment of a term not exceeding 3 months or both***. Under section 36, the Authority shall keep and maintain an up-to-date register of migrant workers in each foreign country.

Section 42 provides for the ***Migrant Workers Welfare Fund*** to provide protection and assistance to Kenyan workers during departure, stay in destination country and upon return to the country. In section 43, the Cabinet Secretary may, by notice in the *Gazette,* restrict the migration of Kenyan workers to any country if the migration to that country may jeopardize public or State interest or the health and safety of the migrant workers. In section 44, the ***repatriation of a migrant worker*** shall be the primary responsibility of the private agency if the migrant worker is found on medical examination to be unfit for employment; the migrant worker fails to secure the employment signed for under the contract of employment; or the Authority finds that the migrant worker has been employed by misrepresentation or mistake. This doesn't apply when termination of employment is solely the worker's fault. The private agency in this case is not responsible for the repatriation of the migrant worker. Repatriation of a deceased shall be facilitated by the private agency in collaboration with the employer within 1 month of the death of a migrant worker. ***A private***

***employment agency that contravenes shall be liable to a fine not exceeding 5 million or a term not exceeding 2 years or both.***

Section 45 provides for ***bilateral labour agreements*** with other countries to enhance safe, fair and orderly migration; increase opportunities for migration by Kenyan citizens for foreign employment; improve the management of labour migration; improve the repatriation and reintegration of the migrant workers and; safeguard the welfare and rights of migrant workers and the members of their families. Such memorandum shall have the following principles: promotion of fair recruitment; protection of the migrant workers' rights; safety and human dignity of migrant workers within the country protection of labour and other human rights of Kenyan migrant workers in the concerned country; respect to international standards; migrant workers' right to information and right to redress if their rights are violated in the concerned country.

***Offences*** under section 48 cover any person who engages in the deployment of a migrant worker in a job which is harmful to the health, security or dignity of the migrant worker; substitutes or alters a foreign contract of employment that has been approved and attested by a labour officer without the approval of the labour officer or; withholds the travel documents of a migrant worker before departure for monetary or financial consideration, or for any other reason, other than those authorized under this Act, ***commits an offence and is liable, on conviction, to a fine not exceeding 3 million shillings or imprisonment for a term not exceeding 2 years, or both.*** Under section 49, ***anyone who commits an offence under the Act that is not specifically provided for is liable to a fine not exceeding 1 million or imprisonment for a term not exceeding 2 years or both. The court may also order revocation of the certificate of registration or prohibit any act from continuing.*** Under section 50, the Cabinet Secretary shall ***establish safe houses*** in labour destination countries to provide temporary holding for migrant workers in distress.

Section 51 provides that the Cabinet Secretary may in consultation with county governments, ***make regulations*** necessary for the purpose of giving effect to or for the better administration of the Act.

In section 52, a person who at the commencement of the Act is carrying on business as a private employment agency on the authority of registration certificate issued under the Labour Institutions Act, 2007 shall apply for fresh registration under the Act within six months of the commencement of the Act.

**Further Recommendations on the Bill:**

- Add a provision to ensure accessibility of medical care to the workers in other countries. (can be included in the regulations part of the contract between agencies)
- Reporting channels by Kenyans in distress to be made available and be in the Act. (can be included in the regulations under role of the labour attache)
- The Kenyan Government may also come up with measures where workers (especially those going for domestic work) may be allowed to deposit their passport with the Embassy to enable them leave when exploited to avoid incidences of their passports being taken away from them by employers upon arrival.
- Under Section 7 that provides for powers of Authority, it should provide for a general provision to say "*summon any agency for purposes of responding to any enquiry*". This allows the authority to call upon agencies for impromptu returns.
- The statutory obligation to file returns by agencies should be expanded to allow the authority to request for filing of returns whenever there is need (other than the usual annual returns). This will provide an avenue of conducting continuous vetting of the agencies.
- Under section 20 on the security Bond, add a sub section to provide that the security Bond shall not be transferable.
- Under section 21 on cancellation of registration, create a penal provision for anyone in contravention of the reasons for cancellation. Other than the registration being cancelled one should also be penalised for any of the reasons for cancellation e.g provide for the offence of uttering misleading or false information with regards specifically to acquisition of registration and provide a punitive penalty under it.

Mems (2)

OFFICE OF THE CLERK-SENATE
SECRETARY
14 OCT 2024
PSC
P.O. Box 41842 - 00100, NAIROBI

Subject KNCCI's Comments on Labour Migration Managemnt Bill 2024

From Kiplimo Kigen <kiplimo.kigen@kenyachamber.or.ke>

To
CLERK SENATE <CLERK.SENATE@parliament.go.ke>, laboursocialwelfarecomm senate <laboursocialwelfarecomm.senate@parliament.go.ke>

Date Monday October 14, 2024 3:38:15 PM

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Dear Clerk,

Hope you are well. Please see attached comments from the Kenya National Chamber of Commerce and Industry (KNCCI) on the Labour Migration Management Bill 2024.

In case of any questions or concerns, do not hesitate to reach out.

THE SENATE
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14 OCT 2024
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--

**Warmly,**

**Kiplimo Kigen** | **Head of Policy Research & Advocacy**

**THE KENYA NATIONAL CHAMBER OF COMMERCE & INDUSTRY.**

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15/10/2024

(1) DLFC
Kindly deal.
14/10/2024

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(DSEC)

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KENYA NATIONAL CHAMBER OF COMMERCE & INDUSTRY
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(3) Ms. Mwanate
Kindly deal
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15/10/2024

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Attachments
KNCCI Comments on Labour Migration Bill 2024_VF.pdf (112 kB)

KNCCI Growing your Business together
KENYA NATIONAL CHAMBER OF COMMERCE & INDUSTRY

# KNCCI SUBMISSIONS ON LABOUR MIGRATION MANAGEMENT BILL 2024

**KNCCI is the longest serving independent voice of the private sector.** We are a membership-based organization with over 2 million members, majority of who are micro small and medium enterprises (MSMEs), and with representation in all the 47 counties through our County Chapters. We advocate the creation of a favorable trade and investment environment that supports enterprise expansion.

We have reviewed the The Labour Migration Management Bill, 2024 and highlighted the key proposed changes below:

| CLAUSE | AMENDMENT |
|---|---|
| **Clause 2 interpretation** | In the interpretation section of the Bill, there is a notable lack of clarity regarding the classification of agencies operating in Kenya. Specifically, the Bill fails to provide a clear definition of whether these agencies are to be recognized in accordance with the International Labour Organization (ILO) definition, which distinguishes between private employment agencies and private recruitment agencies. This ambiguity raises concerns about the legal status and regulatory oversight of these entities under Kenyan law. |
| **Clause 3 on the objects of the Bill** | Since the labor migration industry involves multiple stakeholders, one of the key objectives of the Bill, particularly the promotion of fairness, is to ensure the protection of all parties involved, including the migrants and the private agencies. This framework seeks to establish equitable practices that safeguard the rights of both labor migrants and recruitment agencies, ensuring transparency and accountability throughout the migration process. |
| **Clause 4 on the Application of this Bill** | The migrant worker plays an indispensable role in the labor migration industry, and as such, their recognition and inclusion as a key stakeholder directly impacted by the provisions of the Bill are essential. Given the significant influence that the Bill's regulations and protections will have on their rights, working conditions, and welfare, it is imperative that migrant workers are afforded adequate representation and consideration in all legal frameworks and policy discussions. |

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| **Clause 6 on the Functions of the Authority** | The relevant authority shall be responsible for maintaining comprehensive and up-to-date records of all migrant workers. This data collection is not only crucial for effective oversight but also serves as a foundational element in the formulation and implementation of policies tailored to safeguard the rights and welfare of migrant workers. Such data will enable the authority to monitor migration trends, ensure compliance with legal standards, and make informed decisions that support the well-being of migrant workers and the overall governance of the labor migration sector. |
| **Clause 8 on the establishment of an Inter-MinisterialCommittee** | Given that agencies constitute an integral part of the labor migration industry, it is both appropriate and necessary to include their representatives within the committee. The inclusion of agency representatives will ensure that the perspectives, concerns, and interests of these entities are adequately represented and considered in decision-making processes. This representation is critical to achieving alignment and congruence among all stakeholders involved, thereby fostering a collaborative and transparent environment that upholds fairness and accountability across the industry. |
| **Clause 8 on the voting rights** | Concerning voting rights, stipulates that each representative of private agencies shall be entitled to half a vote. This provision is designed to mitigate potential conflicts of interest or any attempt by representatives to act in ways that could result in self-serving decisions or sabotage among themselves. The rationale behind this approach is to ensure a balanced and fair representation of private agencies within the decision-making process. It is further recommended that the representative from the private agencies be either the Chief Executive Officer of the relevant association or a delegate elected through a democratic process conducted by the association. |

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| **Clause 17(8) on Application for registration.** | The provision stipulating that a certificate of registration shall, unless canceled earlier, be valid for a period of one year from the date of issuance is rendered nugatory by the fact that the Cabinet Secretary has issued a directive extending the validity period to two years from the date of issuance. This creates a conflict between the legislative provision and the executive directive, resulting in legal ambiguity. To ensure consistency and legal certainty, the provision must be amended to reflect the Cabinet Secretary's directive, thereby aligning the statutory framework with the administrative practice and ensuring the validity of the certificates is in conformity with the applicable legal and regulatory standards. |
| **18 (a) (iv) conditions for registration of private employment agencies** | Non-governmental organizations (NGOs) should be prohibited from engaging in this sector, as the nature of the business is profit-oriented rather than philanthropic. Allowing NGOs to participate in a commercial enterprise that seeks to generate profit is fundamentally at odds with their core mission of providing charitable or social support. Furthermore, the government would face significant challenges in scrutinizing such organizations, particularly in terms of regulatory compliance and financial transparency, given their non-profit status. This creates potential loopholes for tax evasion, as NGOs are generally not structured to contribute to taxation in the same manner as for-profit entities. To maintain the integrity of the industry and ensure equitable tax obligations, it is imperative that only duly registered and regulated commercial entities, subject to appropriate oversight and taxation, be permitted to operate within this space. |

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| **Clause 17(9) on Application for registration.** | Given that the renewal of a license may take a considerable amount of time, it is prudent to implement a grace period during the renewal process, ensuring that the license is not canceled prematurely. Upon the submission of an application for renewal at least two months prior to the expiration of the existing license, the license shall remain valid until such time as a final decision is rendered by the committee, as outlined in Clause 17(4). This provision ensures continuity of operations and prevents any undue disruption to business activities due to administrative delays in the renewal process, while safeguarding the interests of both the licensee and the regulatory authority. |
| **Clause 18 (d) Condition for registration of private employment agency** | One of the stipulated requirements for engaging in this business is the demonstration of the existence of a new market. However, we contend that this requirement is unnecessary and should be reconsidered. Not every individual or entity interested in entering this sector is expected to create or identify a new market. Many prospective participants may seek to operate within established markets or improve existing services, which should not be seen as a detriment to their eligibility. Imposing a requirement for proof of a new market could unjustly limit opportunities for individuals who aim to innovate within current frameworks or enhance competition in established areas. Therefore, it is recommended that this requirement be amended to allow for greater inclusivity and to acknowledge the diverse approaches that can contribute to the growth and dynamism of the industry. |
| **Clause 18 (e) Condition for registration of private employment agency** | Another stipulation outlined in the proposed Bill is the requirement that an individual must possess experience in human resource management in order to qualify for the position of director within the agency sector. We respectfully disagree with this stipulation for several reasons. First, the field of agency operations encompasses a diverse range of competencies that may not necessarily align with traditional human resource management experience. Effective leadership in this sector can also stem from backgrounds in business administration, operations management, marketing, or |

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| | other relevant fields that contribute to the strategic direction and operational efficiency of an agency.<br><br>Moreover, imposing such a specific prerequisite may unduly restrict the pool of qualified candidates, thereby limiting the potential for innovative leadership and diverse perspectives within the industry. It is essential to recognize that valuable skills and insights can be gained through various professional experiences, and the emphasis on human resource management may inadvertently exclude individuals who possess the necessary acumen to effectively lead an agency. Therefore, we advocate for a more inclusive approach to the qualifications required for directorship, allowing for a broader range of experiences and expertise that can benefit the agency sector as a whole. |
| **Clause 27 2 (b) on duties of agencies** | Addresses the duties of agencies, specifically concerning the manner in which they are permitted to charge for their services. This clause explicitly cautions agencies against imposing charges for services that are not expressly prescribed by the regulations outlined in this Act. However, we contend that this provision may be inherently unjust to the participating parties.<br><br>As a matter of legal procedure and customary practice, the law often lags behind the rapidly evolving landscape of industry practices and emerging issues. Consequently, it is entirely plausible that not all relevant services and associated charges may be adequately captured within the regulatory framework at any given time. This creates a situation where agencies may inadvertently find themselves in violation of the clause, despite their intentions to operate within the bounds of the law. Moreover, such a restriction may inhibit the agencies' ability to respond flexibly to market demands and to innovate in service delivery. It is therefore imperative to consider a more adaptable approach that allows for the inclusion of a broader range of |

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| | services while still ensuring transparency and fairness in the charging practices of agencies. A more equitable framework would better serve the interests of both the agencies and the individuals they assist. |
| **Clause 27 2 (a) on duties of agencies** | Who is responsible for establishing the regulations governing the charging practices of agencies within the framework of this Act? It is essential to clarify the authority designated to formulate, implement, and oversee these regulations to ensure compliance and uniformity across the industry. Understanding the regulatory authority will provide insight into the standards and guidelines that agencies must adhere to in their charging practices, thereby ensuring that they operate within the bounds of the law and uphold the principles of transparency and fairness in their financial dealing |
| **Clause 28 (1) on Pre departure training.** | The proposed Bill notably lacks provisions pertaining to the exemption from pre-departure training for certain individuals or categories of migrant workers. Consequently, there are no articulated guidelines or procedures for applicants seeking to obtain an exemption from the mandatory pre-departure training requirements. This absence of provisions raises concerns regarding the flexibility and adaptability of the regulatory framework, particularly for individuals who may already possess adequate skills, qualifications, or experience that render the pre-departure training redundant or unnecessary.<br><br>Moreover, without a clear mechanism for applying for such exemptions, affected parties may face undue burdens and delays in the migration process, which could ultimately hinder their employment opportunities and overall success in the host country. It is therefore imperative that the Bill be amended to include specific provisions that allow for the possibility of exemptions from pre-departure training, thereby ensuring a more equitable and efficient approach to the training requirements imposed on migrant workers. |

We urge the Committee to adopt these recommendations and reach out to the KNCCI for any support required in this endeavor.

**Contacts:**
**Kiplimo Kigen**
Head of Policy Research and Advocacy
KNCCI
0704 145 489
Kiplimo.kigen@kenyachamber.or.ke

ASMAK

*Association of Skilled Migrants Agencies of Kenya*

**REF:ASMAK/061/2024** **14th October 2024**

**The Senate Clerks' chambers**
**Parliament Buildings**
**Attention:Ms.Mwanate Shaban**
**P.O. Box 41842-00100**

**Nairobi-Kenya**

Dear Madam,

**RE:THE LABOUR MIGRATION MANAGEMENT BILL,2024**

On behalf of our member agencies humbly would wishes to make an appeal and or seek amendments on the following clauses of the proposed **The Labour Migration Management Bill,2024;**

| CLAUSE | AMENDMENT |
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| **Clause 2 interpretation** | In the interpretation section of the Bill, there is a notable lack of clarity regarding the classification of agencies operating in Kenya. Specifically, the Bill fails to provide a clear definition of whether these agencies are to be recognized in accordance with the International Labour Organization (ILO) definition, which distinguishes between private employment agencies and private recruitment agencies. This ambiguity raises concerns about the legal status and regulatory oversight of these entities under Kenyan law. |

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| **Clause 4 on the Application of this Bill** | The migrant worker plays an indispensable role in the labor migration industry, and as such, their recognition and inclusion as a key stakeholder directly impacted by the provisions of the Bill are essential. Given the significant influence that the Bill's regulations and protections will have on their rights, working conditions, and welfare, it is imperative that migrant workers are afforded adequate representation and consideration in all legal frameworks and policy discussions. |

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| **Clause 6 on the Functions of the Authority** | The relevant authority shall be responsible for maintaining comprehensive and up-to-date records of all migrant workers. This data collection is not only crucial for effective oversight but also serves as a foundational element in the formulation and implementation of policies tailored to safeguard the rights and welfare of migrant workers. Such data will enable the authority to monitor migration trends, ensure compliance with legal standards, and make informed decisions that support the well-being of migrant workers and the overall governance of the labor migration sector. |
| **Clause 8 on the establishment of an Inter-MinisterialCommittee** | Given that agencies constitute an integral part of the labor migration industry, it is both appropriate and necessary to include their representatives within the committee. The inclusion of agency representatives will ensure that the perspectives, concerns, and interests of these entities are adequately represented and considered in decision-making processes. This representation is critical to achieving alignment and congruence among all stakeholders involved, thereby fostering a collaborative and transparent environment that upholds fairness and accountability across the industry. |

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| **Clause 17(8) on Application for registration.** | The provision stipulating that a certificate of registration shall, unless canceled earlier, be valid for a period of one year from the date of issuance is rendered nugatory by the fact that the Cabinet Secretary has issued a directive extending the validity period to two years from the date of issuance. This creates a conflict between the legislative provision and the executive directive, resulting in legal ambiguity. To ensure consistency and legal certainty, the provision must be amended to reflect the Cabinet Secretary's directive, thereby aligning the statutory framework with the administrative practice and ensuring the validity of the certificates is in conformity with the applicable legal and regulatory standards. |
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| **Clause 27 2 (a) on duties of agencies** | Who is responsible for establishing the regulations governing the charging practices of agencies within the framework of this Act? It is essential to clarify the authority designated to formulate, implement, and oversee these regulations to ensure compliance and uniformity across the industry. Understanding the regulatory authority will provide insight into the standards and guidelines that agencies must adhere to in their charging practices, thereby ensuring that they operate within the bounds of the law and uphold the principles of transparency and fairness in their financial dealing |
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| | the training requirements imposed on migrant workers. |
| **Clause 30.(3) on Foreign contracts of service.** | This clause stipulates that a private employment agency shall be regarded as a representative of the foreign employer and, as such, shall be jointly and severally liable for any liabilities arising from the foreign contract of service. However, this provision is fundamentally unjust, as the agency lacks direct control over events and circumstances occurring abroad and must operate solely based on the agreements, terms, and conditions provided by the foreign employer. Inclusion of the stipulation that agencies be held liable for matters beyond their control does not adequately consider the realities of international labor transactions, where agencies primarily serve as intermediaries facilitating employment opportunities without direct oversight of the employment conditions in the host country. Therefore, it is essential to amend this clause to specify that private employment agencies should only be held liable in cases where there is clear evidence of misrepresentation or fraud committed by the agency itself. Such a modification would ensure that the agency is not unjustly penalized for factors outside its purview and would promote a more equitable framework that recognizes the agency's role as an intermediary rather than an active participant in the foreign employment relationship. |

ASMAK

*Association of Skilled Migrants Agencies of Kenya*

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| **Clause 40 on the Orders made by The Authority.** | There is no provision for appeal hence it should be included ;A person who is aggrieved by the order made by the Authority may appeal against such decision to the Employment and Labour Relations Court within thirty days of the decision. |

**OMMISSIONS**

**. Kindly include the definitions of PRIVATE RECRUITERS ASSOCIATION AND PRIVATE EMPLOYMENT AGENSIES.**

**. THE ROLES OF PRIVATE RECRUTORS ASSOCIATIONS AND PRIVATE EMPLOYMENT AGENSIS.**

**. PROTECTION OF PRIVATE RECRUTORS ASSOCIATIONS AND PRIVATE EMPLOYMENT AGENSIS AGAINST MIGRANT WORKERS AND BUSSINESS PROTECTION,**

**. GOVERNMENT INTERVENTION AND COMPESATION AGAINST NATURAL DISASTERS I.E COVID.**

**. ROLES AND RESPONSIBILITIES OF MIGRANTS WHILE ON PROCESS i.e RECRUITING, AFTER PROCESS AND WHILE WORKING.**

**. PROCESS THE GOVERNMENT WILL TAKE AFTER FAILLED AUTHENTICATION.**

**. GOVERNMENT NEEDS TO BE A FACILITOR AND NO COMPETING WITH AGENCIES.**

***Note; The Bill with the tracked changes is attached herein.***

Kindly act accordingly. We are willing to work with your team in getting a final draft. Looking forward to your response.

Yours Sincerely,

Francis Nduhio Wahome
Chairman ASMAK

ASSOCIATION OF SKILLED MIGRANT AGENCIES OF KENYA
ASMAK

*Realizing Excellence through Human Resource*
*P.O.BOX 10362 – 00100 NAIROBI| info@asmak.co.ke|*
*www.asmak.co.ke*
*Longonot place 7th floor, Kijabe street.*
*We are transparent, Accountable and Against Human Trafficking*

# MEMORANDUM ON THE LABOR MIGRATION AND MANAGEMENT BILL (No. 2), 2024

To: The Clerk of the Senate,

From: George Chacha,
Date: 2nd October, 2024

Subject: Labor Migration and Management Bill (No. 2), 2024

I submit this memorandum in response to the proposed Labour Migration and Management (No. 2) Bill, 2024 (Senate Bill No. 42), which seeks to regulate the recruitment of Kenyan workers for employment both locally and abroad, and protect the rights of migrant workers. I commend the Bill's attempt to address critical issues faced by Kenyan labor migrants, especially in the Middle East. However, I propose the following points for consideration to further strengthen the Bill.

1. Regulation of Private Employment Agencies

The Bill proposes a multi-agency vetting process for private employment agencies. While this is commendable, the following should be considered:

- Increased accountability mechanisms for private employment agencies, including periodic audits and public disclosures of complaints raised against them.
- The introduction of heavy penalties for agencies involved in misrepresentation, exploitation, human trafficking, or violation of migrants' rights.
- A grievance redress mechanism should be easily accessible by workers abroad, supported by embassies and the labor attachés, to handle complaints expeditiously.

2. Pre-Departure Training and Orientation

The Bill provides for pre-departure orientation, but there is a need to expand the scope of training to include:

- Financial literacy education, particularly focused on savings and investment back home, to ensure workers make the most of their earnings abroad.
- Training on mental health and stress management, which can mitigate the psychological toll on migrant workers, especially those employed in stressful environments.

3. Data Collection and Tracking of Migrant Workers

The Bill proposes implementation a migrant workers' online portal for registration. This can be advanced:

- The portal should be integrated with border control management information systems (eg the ones currently in use by the immigration directorate) and easily accessible to immigration and other relevant Government authorities, to identify and verify individuals traveling abroad fro employment.

4. Return and Reintegration

Reintegration has been limited to the definition only. However, it can be expanded, to wit:

- Skills recognition: returning workers' international experience and valuable skills acquired should be harnessed and utilized locally.

- Incentive schemes for returning workers to invest in their home counties, such as tax breaks for those starting businesses or investing in local development projects.

5. Stronger Bilateral Labor Agreements (BLAs)

BLAs with destination countries are a core feature of this Bill, yet the effectiveness of these agreements will depend on their enforcement. Therefore:

- Regular reviews and updates of these agreements should be mandated, with active participation from the migrant workers, and labor attaches.

- The government should prioritize agreements with countries that have a strong track record of protecting workers' rights and providing social protections like healthcare and insurance.

In conclusion, the Bill is a significant step toward improving the conditions of Kenyan migrant workers. However, to ensure its success, greater emphasis should be placed on the practical enforcement and implementation, other than just being good on paper.

Sincerely,
Chacha,
Kenyan Citizen

REPUBLIC OF KENYA

# COUNTY ASSEMBLIES FORUM (CAF)

Flamingo Towers, 5th Floor Wing B, Mara Road, Upper Hill P.o Box 73552 - 00200 Nairobi Kenya Tel: 0701 046 933
Email:communication@countyassembliesforum.org www.countyassembliesforum.org

## CAF MEMORANDUM THE LABOUR MIGRATION AND MANAGEMENT (NO. 2) BILL, 2024 (SENATE BILLS NO. 42 OF 2024)

**TO:** Mr. Jeremiah Nyegenye, CBS
Clerk of the Senate, Parliament of Kenya.

**FROM:** The County Assemblies Forum.

**DATE:** 24th October 2024

**SUBJECT:** CAF Memorandum on The Labour Migration and Management (No. 2) Bill, 2024 (Senate Bills No. 42 of 2024)

## 1.0 INTRODUCTION

1. The County Assemblies Forum (CAF) is the coordinating body of the 47 County Assemblies in Kenya. The primary mandate of CAF is to promote networking and synergy among the 47 County Assemblies, coordinate intergovernmental relations and enhance good practice in legislative development. Our Mission is to provide effective leadership and coordination of the 47 County Assemblies and through policy and legislative action, promote a conducive working environment for all its members, and in that way deliver quality services to the people.

2. As one of the pillars of the devolved government system, CAF is committed to engage in processes that lead to the further strengthening protection of employment rights of workers in Kenya and abroad.

## 2.0. BACKGROUND

2.1. The ***Labour Migration and Management (No. 2) Bill, 2024*** provides a legal framework for managing labour migration, regulating private employment agencies, and ensuring the protection of Kenyan migrant workers.

2.2. The Bill applies to private employment agencies, recruitment of Kenyan citizens for foreign employment, and migrant workers themselves.

2.3. Workers are to be deployed only to countries with laws protecting migrant workers' rights, signatories to international conventions, and with existing bilateral agreements.

2.4. The National Employment Authority (NEA) will register and regulate private employment agencies, develop pre-departure programmes, and create awareness about employment opportunities abroad.

2.5. The Multi-Agency committee, comprising representatives from various ministries and departments, will vet private employment agencies.

2.6. Labour attachés will be posted to Kenyan missions abroad to ensure Kenyan workers'

rights are upheld, authenticate job orders, and offer necessary support.

2.7. Furthermore, Counties will issue licenses to private employment agencies, collaborate with the NEA, and develop policies for reintegrating migrant workers upon their return.

2.8. The Bill provides for an online portal will be created to facilitate the registration of private employment agencies and migrant workers and provide a platform for interaction with relevant institutions.

3.0. GENERAL COMMENTS.

3.1. CAF acknowledges the importance of the *Labour Migration and Management (No. 2) Bill, 2024*, which aims to address key challenges faced by Kenyan migrant workers and provide a robust regulatory framework for the migration process. With the increasing number of Kenyans migrating for work, particularly to the Middle East and Gulf region, this Bill represents a timely and necessary intervention to protect their rights, welfare, and safety.

3.2. The Bill provides an improved framework to safeguard the rights and welfare of Kenyan migrant workers, especially those working in regions where they have historically faced exploitation and abuse.

3.3. The introduction of labour attachés in Kenyan missions abroad will play a crucial role in overseeing the conditions of migrant workers, ensuring compliance with labour contracts, and intervening in cases of distress.

3.4. The Bill does not sufficiently integrate county governments in the management of labour migration, which could lead to a lack of local context in the implementation of key provisions, such as the pre-departure orientation programs and reintegration of returning migrant workers.

3.5. The Bill's emphasis on collaboration between the national government and counties in managing labour migration is commendable but may face challenges in execution, given the limited capacity and resources in some counties.

3.6. The Bill's migrant workers' portal should include county-specific data to facilitate more effective service provision and local-level decision-making, particularly in terms of migrant worker reintegration.

3.7. CAF appreciates the opportunity to contribute to this Bill and on the basis of the foregoing proposes the following amendment:-

4.0 SUMMARY MATRIX OF THE PROPOSED AMENDMENTS.

| NO. | CLAUSE | PROPOSED AMENDMENT | JUSTIFICATION |
|---|---|---|---|
| 1. | **Clause 3 of the Bill**<br>**Object of the Act**<br>*"The object of this Act is to –*<br>*(a) promote safe, fair, ethical and orderly recruitment of workers;*<br>*(b) protect the rights of job seekers;*<br>*(c) enhance co-ordination of labour migration governance in the Kenya;*<br>*(d) enhance transparency and flexibility in labour migration;*<br>*(e) promote overseas employment;*<br>*(f) protect the human and labour rights and promote the welfare of Kenyan migrant workers;*<br>*(g) maximize participation of Kenya migrant workers in the economic development;*<br>*(h) promote equal treatment of* | Amend the Clause by adding a new sub clause (k) to state<br>*" (k) provide a framework for returning migrant workers, for their welfare, protection, and support during the reintegration process, including economic, social, and psychological assistance."* | ➢ This additional clause ensures that the Bill comprehensively covers the needs of returning migrant workers. Reintegration is a critical aspect of the labour migration cycle, and migrant workers need support to transition back into their home communities. This clause promotes their welfare by addressing potential economic, social, and |

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| | *foreigners' migrant workers in Kenya who are lawfully engaged in employment;*<br>*(i) provide a framework for collection, analysis and use of data and information on labour migration and labour migrants; and*<br>*(j) promote opportunities for employment.* | | psychological challenges they may face upon return. |
| 2. | **Clause 8 of the Bill**<br>**Establishment of a Multi-Agency Committee on the vetting of Private Employment Agencies.**<br>*8. (1) There is established a Multi-Agency Committee on Vetting of Private Employment Agencies. (2) The Committee shall consist of– (a) the Principal Secretary responsible for matters relating to labour or his representative; (b) the Principal* | Amend the Clause by adding a new sub clause (i) to state<br>*" (i) two representatives nominated by the Council of Governors, one representing urban counties and one representing rural counties."* | Expanding the role of county governments to include participation in the Multi-Agency Committee ensures that counties are represented in key decision-making processes, allowing for more tailored and localized approaches to labour migration management. |

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| | *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* | | |
| 3. | **Clause 11 (3) of the Bill**<br>**Labour attachés.**<br>*The functions of a labour attaché deployed to a foreign country shall be* | Amend the Clause by adding a new sub clause (q) to state:-<br>*"(q) provide legal assistance, advice, and referral services to migrant workers facing* | ➢ This additional clause ensures that labour attachés play an active role in safeguarding the |

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| | *to – (a) seek employment opportunities for Kenyans in his or her host country; Labour attachés. 816 The Labour Migration Management (No. 2) Bill, 2024*<br>*(b) authenticate job orders;*<br>*(c) vet destination employment conditions;*<br>*(d) attend to complaints relating to migrant workers in that country;*<br>*(e) visit workplaces and workers' accommodation facilities to assess working and living conditions;*<br>*(f) monitor the implementation of Bilateral Labour Agreements;*<br>*(g) monitor the welfare of migrant workers and promote awareness of their rights to minimize on violation of their rights;*<br>*(h) collect and collate labour migration* | *contractual disputes, abuse, or violations of their labour and human rights, in coordination with relevant authorities and legal experts in the host country."* | rights of Kenyan migrant workers by offering legal support in cases of disputes or abuse. Many migrant workers face legal challenges in foreign countries, including issues of contract violations, exploitation, and abuse. This amendment empowers labour attachés to intervene more effectively and ensures that workers have access to necessary legal resources and protection. |

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| | *data and statistics on Kenyan migrant workers in that country;*<br>*(i) provide labour market information to migrant workers;*<br>*(j) analyze and advise the Cabinet Secretary on the demand for foreign labour in the respective country;*<br>*(k) attest foreign contracts of employment;*<br>*(l) monitor situations and labour policy developments in the host country that may affect migrant workers;*<br>*(m) facilitate the provision of counselling services to migrant workers;*<br>*(n) supervise and co-ordinate the operations of safe houses for migrant workers in that country;*<br>*(o) submit to the Cabinet Secretary an annual report and recommendations* | | |

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| | *relating to the conditions of migrant workers working in that country; and (p) perform any other function as may, from time to time, be assigned by the Cabinet Secretary.* | | |
| 4. | **Clause 13 of the Bill**<br>**Role of County Governments**<br>*A County government shall –*<br>*(a) issue county operating licences to private employment agencies; (b) in collaboration with the National Employment Authority, establish a database of migrant workers from specific counties;*<br>*(c) develop policies and programmes offering incentives to migrant workers from specific counties to invest in;*<br>*(d) publicise, in consultation with the National Employment Authority and private employment agencies, job* | Amend the Clause by adding a new sub clause (g) to state:-<br><br>*"(g) participate in the Multi-Agency Committee on Vetting of Private Employment Agencies through representatives nominated by the Council of Governors."* | ➢ Enhancing devolution ensures that county-specific concerns are addressed during the vetting process for private employment agencies, leading to better coordination between national and county governments and more effective protection of migrant workers. |

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| | *vacancies for Kenyan workers outside the country;*<br>*(e) develop county specific investment programmes for migrant workers; and*<br>*(f) facilitate, in collaboration with the national government, the reintegration of returning migrant workers back to counties of origin* | | |
| 5. | **Clause 15 of the Bill**<br>**Migrant workers portal.**<br>*15. (1) The Authority shall establish a migrant workers online portal.*<br>*(2) The migrant workers online portal shall –*<br>*(a) facilitate the registration of private employment agencies;*<br>*(b) facilitate the registration of migrant workers;*<br>*(c) provide details of all registered private employment agencies;* | Amend the Clause by adding a new sub clause (3) to state:-<br>*"(3) The migrant workers online portal shall include county-specific sections to facilitate data collection and service provision for migrant workers at the county level."* | ➢ Including county-specific sections in the migrant workers portal will facilitate effective data collection and service provision at the county level, enabling counties to provide better support for migrant workers, particularly in reintegration efforts. |

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| | *(d) provide a platform for interaction between the migrant workers and the National and county governments, private institutions, investors, and other relevant institutions;*<br>*(e) provide access to finance, information, innovation, and investments for the migrant workers;*<br>*(f) provide information on job opportunities outside the country;*<br>*(g) provide information on clearances, approvals and registration requirements for migrant workers;*<br>*(h) receive complaints and recommendations from migrant workers, industry stakeholders and the general public; and*<br>*(i) serve as a gateway to all migrant workers' services by the national and county governments.* | | |

Yours sincerely,

HON. PHILEMON K. SABULEI,

CHAIRPERSON CAF