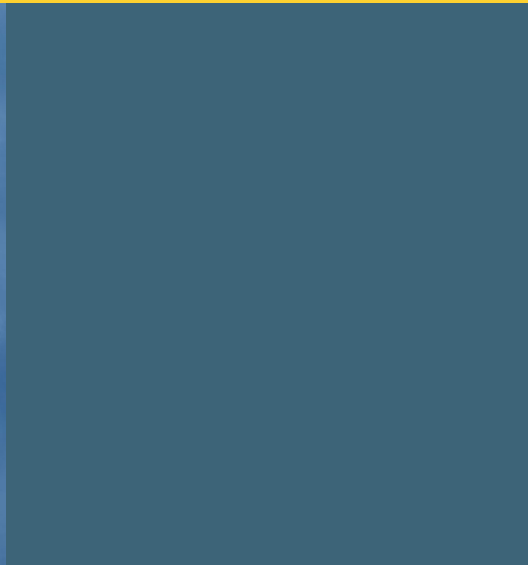
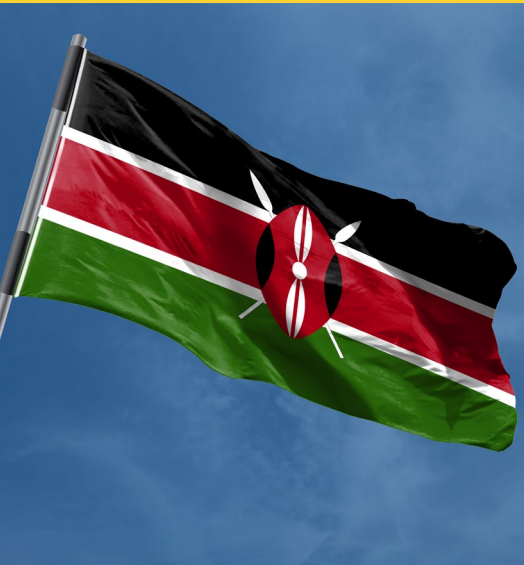


AN ANALYSIS OF MIGRATION GOVERNANCE FRAMEWORKS IN KENYA

MIGRATION GOVERNANCE REFORM IN AFRICA PROGRAM

5TH MIGRA REPORT



n **s** new south
institute
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List of Abbreviations

AFMP	Africa Free Movement of Persons
BCOCC	Border Controls and Operations Coordination Committee
BLA	Bilateral Agreement
BMD	Border Management Division
CBK	Central Bank of Kenya
COMESA	Common Market for Eastern and Southern Africa
COTU	Central Organisation of Trade Unions
CSOs	Civil society organizations
EAC	East African Community
ETA	Electronic Travel Authorisation
FMP	Free Movement of Persons
G.O.K	Government of Kenya
IFC	International Finance Corporation
IGAD	Intergovernmental Authority on Development
ILO	International Labour Organization
IMF	International Monetary Fund
IOM	International Organization for Migration
KANU	Kenya Africa National Union
KIPPRA	Kenya Institute for Public Policy Research and Analysis
KNCHR	Kenya National Commission on Human Rights
KPA	Kenya Ports Authority
KRA	Kenya Revenue Authority
KWS	Kenya Wildlife Service
LAPSET	Lamu Port-South Sudan-Ethiopia Transport
MIGRA	Migration Governance Reform in Africa
MLC	Maritime Labour Convention
MOU	Memorandum of Understanding
NCM	National Coordination Mechanism on Migration
NEA	National Employment Authority
NHS	National Health Service
NITA	National Industrial Training Authority
RMFM	Regional Ministerial Forum on Migration for East and Horn of Africa
SADC	Southern African Development Community
UAE	United Arab Emirates
UNDESA	United Nations Department of Economic and Social Affairs
UNEP	United Nations Environment Programme
UNHCR	United Nations High Commissioner for Refugees

Executive Summary

This paper examines the historical context of migration in Kenya, tracing its evolution from pre-colonial times to the present day. It analyses how internal migration patterns have been influenced by factors such as economic disparity and rural-urban dynamics. The development of major infrastructure routes in Kenya has coincided with urban sprawl and the creation of nuclei of economic centres, upon which migrants coalesce. The focus of the governance review in this paper is on cross-border migration, not internal.

Executive Summary

The policy responses to migration have been reactive, with implementation being selective. Analysis of the migration governance framework reveals compartmentalisation of policies and weak complementarity between institutions. Policy development and application can vary depending on whether the subject concerns emigrants or immigrants. The state is more constructive on emigrant issues.

The paper explores the attitude of the state towards migration to understand better the implications for migrants and for policy reform. The posture of the state differs at the international, national and local levels, where different considerations inform responses. The government must manoeuvre between trying to protect migrant rights, benefitting economically from immigrants and emigrants, and retaining the confidence of the masses.

Migration to and from Kenya is an evolving phenomenon that requires innovative ways of thinking, to strike a balance between the rights and responsibilities of all migrants. Traditional band-aid solutions are unlikely to survive the test of time for emerging issues including security challenges, inadequate regulatory framework and brain-drain among others. An innovative approach is predicated on the engagement of a wider base of stakeholders, beyond just the government. The broader economic and socio-political environment provides testing parameters for migration policy in Kenya. The interaction of players in this space can also create an enabling environment far beyond the current limitations of the law. Therefore, the paper also examines the role of the private sector, civil society, and Kenyans in general, all of whom have positive attitudes towards the entrenchment of a sustainable migration governance process.

01. INTRODUCTION AND BACKGROUND

Kenya is a dynamic society, the leading economy of East Africa and a key player economically, politically, and strategically in the region. It is also a society with a deep history of migration inwards and outwards, and it continues to be one of the African countries which is neither simply a source of, nor a destination for migrants. Migrants in both directions are increasingly significant, and the development and implementation of suitable policies for both immigrants and emigrants is very important for Kenya. These policy challenges, spanning from bureaucratic hurdles, disjointed regulatory frameworks, brain-drain, exploitation, security threats among others, have not been ignored,

but the development and implementation of migration policies in Kenya is far from complete. This working paper is one in a series of eight planned case studies under the New South Institute's Migration Governance Reform in Africa (MIGRA) programme. The purpose of the project is to map viable pathways for improving the ease of movement and settlement by Africans (and potentially by visitors) across African borders and for improving the quality of the management of such migration. Facilitating regular migration helps to lessen the pressure for irregular migration and contributes to African economic, social and cultural development in many ways (Hirsch, 2023).



By 'viable pathways', we mean pathways that are practical given the capabilities of the state and supra-state institutions and doable in the political and economic circumstances. By 'improving ease of movement', we mean introducing better processes, reducing the obstacles faced by Africans who seek to cross African borders (for example, passport and visa requirements), and improving the welcoming stance of the receiving state and other stakeholders. 'Ease of settlement' refers to the rights of migrants to study, work, buy a home, and/or buy or start a business in the host state. By 'quality of the management of migration', we mean the management systems for granting permission to cross borders, recording cross-border movement, and exchanging relevant accurate information about individuals who cross the border between the origin state and the destination state. By 'pathways', we mean the incremental, sporadic, or ambitious processes of reform that are undertaken by states domestically, bilaterally with other states or multilaterally within a regional framework.

This paper, the Kenyan case study, first sets out in some detail the migration trends and patterns in Kenya and then it begins to draw some conclusions and make some recommendations. It is a detailed report following, more or less, a structure set out in the introductory paper to this series titled 'Framing a study of African migration governance reform – Towards freer movement' (Hirsch, 2023). When the four country case studies and the four regional cases are complete, there will be a reflection on the lessons learned from African experiences of migration governance reform and will make some general and specific proposals on how to move the process forward. This paper describes Kenya's circumstances and conditions, and draw tentative conclusions and make some initial suggestions for the reform of policy and practice.

Kenya is bordered by five countries: Ethiopia to the north, Somalia to the east, Tanzania to the south, Uganda to the west, and South Sudan to the northwest. (G.O.K., n.d.) It spans approximately 580,367 square kilometres, encompassing diverse landscapes ranging from savannas and mountains to lakes and coastal plains. The country boasts a stunning coastline along the Indian Ocean that stretches over 600 kilometres, offering picturesque beaches and vibrant marine life (Foeken et al., n.d.). The nation was formed through a complex historical process shaped by interactions between

indigenous communities, foreign powers and colonial influences. Extensive exploration and trade along the East African Coast by Arabs and Portuguese planted the seeds for a common bond and interests in the interacting parties, but it was not until the union of Mombasa Island and the mainland territories that a distinct Kenyan identity began to emerge. While British rule began in 1885, Kenya became a British protectorate and colony in 1920. An armed struggle for freedom culminated in independence from Britain in 1963 (Kilcullen, 2019). Since independence, Kenya has continued to evolve as a multi-ethnic and multi-cultural nation, grappling with challenges such as political instability, ethnic tensions, economic disparities and environmental degradation. However, it has also made significant strides in areas such as education, healthcare, infrastructure development, renewable energy and regional diplomacy, shaping its identity as a dynamic and resilient African nation.

Kenya operates a presidential representative form of government that is democratic (Embassy of the Republic of Kenya, n.d.). The president is both the head of state and head of government and is elected by popular vote. As with most democracies, the government is structured with three arms – the executive, judiciary and a bicameral parliament. Among the key post-independence achievements of the country was the promulgation of a new constitution in 2010, which provides for decentralisation of certain elements of government. In the devolved set up, there are 47 county governments that ostensibly deepen access to services for the citizenry.

As at the last census conducted in 2019, the population of Kenya was 47.5 million people, 49.5% of whom were male (Kenya National Bureau of Statistics, 2019). The country has a youthful population with the age group 0-34 years forming 75% of the total population (National Council for Population and Development, 2019). Ethnic diversity is a defining characteristic of Kenya, with over 40 different ethnic groups, each with its own language, culture, and traditions. Population growth demonstrates a slowly declining trend, from 3.7% in the 1980s, to 2.5% on average in the 2010s, due to a rapidly declining birth rate (Danish Trade Union Development Agency, 2023). Urbanisation is increasing, with significant migration from rural areas to cities in search of employment opportunities and better living standards.

The World Bank estimated that Kenya's GDP was \$113.42 billion in 2022 (World Bank, 2022). The economy is not only robust, but also diverse, with key sectors including agriculture, manufacturing, services and tourism. Agriculture is the highest contributor and employer in the economy accounting for 33% of the GDP (FAO, 2024). Kenya is a major exporter of tea, coffee, flowers and horticultural products, which are also important foreign exchange earners. The services sector, which includes financial services, telecommunications, and tourism, is a significant contributor to GDP growth. For a long time, tourism and agriculture have been important sources of foreign exchange, but in recent years, diaspora remittances have eclipsed them (Cytonn, 2018). Since 2010, the country has managed a GDP growth rate of between 3% and 5%, while largely keeping inflation under control.

The Kenya National Bureau of Statistics (2023) estimated that the overall poverty headcount rate for individuals at the national level was 38.6% in 2021. The hard-core poverty rate for the same year was, however, much lower at 5.8%. By the end of 2022, the unemployment rate was approximately 13% with the youth bearing the brunt of most unemployment and labour underutilisation. The majority of Kenyans have completed both primary and secondary education. According to the World Bank, the literacy rate in Kenya was approximately 83% in 2022, indicating a relatively high level of education among the working-age population (World Bank, 2022b).

Over recent years, migration has been a significant and growing phenomenon in Kenya's societal, economic and political landscape. In 1990, there were approximately 300,000 immigrants and 250,000 emigrants, while in 2020, the figures stood at around 1,000,000 and 500,000 respectively (Mutava, 2023). This increase in the number of migrants in both directions suggests a shift towards global connectedness. Any disquiet or benefits accruing from migration have thus been amplified. Growing complexities require a fresh, structured and clear approach to migration management to fully harness its potential.

Recent discussions on migration emphasise its complex nature, which presents countries with challenging dilemmas (UN, n.d.). While some people emphasise the importance of remittances and advocate for open labour markets across

borders, others focus on the risks associated with migration and its potential to disrupt destination economies. Despite these differing perspectives, it is widely accepted that migration cannot be halted. It is either a necessary but undesirable outcome or a promising avenue for progress, depending on one's perspective. In the case of Kenya, for example, remittances from its citizens living abroad are an important source of foreign exchange, underscoring the value of migration for the country's economic prosperity, though some may decry the loss of skills. While skilled immigrants are also important in Kenya's economy, the country faces challenges associated with immigration, such as the threat of terrorism from irregular immigrants and the strain on public services caused by an influx of immigrants. Halting migration is not a viable solution and a more nuanced approach is needed that takes into account the concerns of both origin and destination countries. This requires bilateral, regional and global dialogue on how to manage migration in a way that allows countries to be both generous hosts and decent guests.

Prosperity that hinges on the positive aspects of migration, such as freer labour mobility between and across countries achieved so far, does not diminish the need to review the framework for migration governance. Current structures have mostly evolved independently, resulting in subpar standards that lack definitiveness. Although Kenya benefits from substantial remittances, there are concerns about the quality and nature of work, as well as working conditions and other contractual implications, in certain parts of the world. Additionally, there are concerns about the treatment of refugees within. Therefore, it is incumbent upon the state to establish clear guidelines and prescribe specific courses of action that are available to all migrants.

The objective of this study is to present a comprehensive assessment of the migration governance framework in Kenya. Through a thorough examination of the existing policies, institutional frameworks and implementation mechanisms, this research aims to identify the shortcomings and obstacles that impede effective migration management. Additionally, it will investigate potential strategies and recommendations to strengthen Kenya's migration governance, such as enhanced interagency collaboration, capacity-building initiatives and regional cooperation.

02.

RESEARCH METHODOLOGY

In this study, a mixed-methods approach is utilised to gather extensive data on the research topic. The research design primarily involves desktop research, using existing literature, reports and datasets from reputable sources. Furthermore, a qualitative component is integrated into the research through semi-structured interviews with select individuals. These interviews provide valuable firsthand

perspectives and insights from key stakeholders with direct experience relevant to the research questions.

By combining desktop research with targeted interviews, this research design aims to achieve a comprehensive understanding of the topic, drawing on both existing knowledge and firsthand accounts to inform the analysis and conclusions.

03.

BRIEF HISTORY OF MIGRATION IN KENYA

Kenya, often referred to as the cradle of humankind, possesses a rich history of indigenous human habitation dating back to prehistoric times. Archaeological evidence gathered as early as the 1930s reveals the presence of early stone age man in the country, following significant discoveries made by Dr Leakey and other researchers (Huntingford, 1933). The region was initially populated by hunter-gatherer communities, who adapted to various environments and evolved over time. The evolution of these seminal societies was shaped by complex and dynamic processes of migration, and this section provides a brief analysis of this evolution, categorised into three eras: precolonial, colonial and post-colonial.

Precolonial Kenya was characterised by diverse ethnic communities, each with its unique cultural practices, languages and socio-political structures. Other than the natives, most other communities migrated into the country from various parts of the continent. Principally, the Bantus came from the Congo, Nilotes from Sudan and Cushites from the horn of Africa (Huntingford, 1933; Lynch & Robbins,

1979; Ndeda, 2019). While these inward movements were sometimes harmonious, they occasionally caused displacements, resulted in wrangles and compelled movements between and among groups. For example, the Abaluyia community were displaced from their original perch by Kenyan Luos. Those who resisted were assimilated into the Luo community (Ndeda, 2019). Notably, these groups pursued subsistence activities which could only accommodate limited trade from the surplus of self-provision (Oyvat & Mwangi wa Githinji, 2017). The Maasai who were nomadic pastoralists, practiced transhumance, moving their livestock seasonally in search of water and pasture. The movement often led to interactions with other communities or occasional altercations with settled agrarian communities (Githinji, 2017).

Kenya's strategic location along the Indian Ocean coast, which served as a hub for trade and commerce, granted it substantial visibility on the global stage. Prior to the arrival of European colonisers, early Arab explorers and traders established critical trading posts in significant coastal towns, such as Malindi and Mombasa,

attracting merchants from Persia, India and China. These posts facilitated the exchange of goods such as gold and ivory, resulting in long-distance trade routes that extended inland. The trading activities led to cultural exchanges, intermarriages and migration, but also marked Kenya's vile entry into the international enslavement system. By the 17th century, the Omani Arabs had established a robust slave trade to meet the labour demands of their plantations in Zanzibar and Oman. In the first half of the eighteenth century, a substantial number of slaves were exported, contributing to the depopulation of East Africa and surpassing the transatlantic slave trade (Vernet, 2009).

The pre-colonial era was also marked by the emergence of diverse political entities, ranging from small-scale chiefdoms to larger, centralised states with expansionist ambitions. As population and sectoral organisation increased, so did the desire for political power and territorial conquests. According to Mambo (1987), the Mijikenda community in Kenya exhibited political organisation, but also experienced numerous civil wars between subtribes. These conflicts were fuelled by competing interests within the political class, leading to alliances of sabotage for greater control or prosperity, which in turn contributed to forced migration. Arguably, the collaboration between chieftainships and slave traders was a key factor in the success of East African slave trade.

Migration during the colonial era was shaped by a complex interplay of economic exploitation, social engineering and political control imposed by the colonial authorities. These migration patterns had lasting impacts on Kenya's demographic composition, socio-economic structure and cultural identity. This was generally a period of forced migration under the guise of discriminative legal frameworks orchestrated purposefully to attain oppressive ends. The British colonial powers developed various policies that compelled Kenyans to migrate for work. For instance, in 1919, the British introduced a controversial law "The Native Labour Legislation" which made labour compulsory for able-bodied men (Cunningham, 2023). Previously in 1910, they had introduced a hut tax aimed at turning the barter economy into a cash one. However, it entailed more sinister motives. It forced thousands of indigenous people to migrate in search of paid work (Jarrett, 1954). A defining outcome of colonisation is urbanisation, as people engaged in rural to urban

migration in search of employment. It is notable that these measures, and a raft of others, were geared specifically towards men. The colonial powers entrenched a clear gender migration disparity, disrupting families and social accord at the time.

Colonial powers enacted policies and practices that pitted one community against another while alienating them from their customary land. Such policies were designed to cause internal displacements. For example, during the construction of the Kenya-Uganda Railway, indigenous inhabitants were forcibly resettled to pave way for the railway. Later the colonial government granted white settler farmers thousands of hectares of land in the Rift Valley to cultivate and take full advantage of the rail system (Veit, 2011). The colonial period, much like the slave trade in the pre-colonial period, experienced considerable international migration. The difference is that, unlike the slave trade, there were also droves of inward migrants, such as the rapid growth of settler farmers and Indian railroad workers. Kenyan migrant workers moved outwards, around greater East Africa, in search of jobs when the tax laws came into effect.

During the colonial era, there was significant migration control. The colonial authorities imposed restrictions on the movement of African populations through measures such as pass laws, curfews and restricted areas. These regulations were designed to control the movement of labour and maintain social order. Africans were required to carry passes or permits to travel outside designated areas, and failure to comply could result in arrest or fines.

In the post-colonial period, the country embedded itself firmly within the community of nations as a significant player. In the years running up to independence, the purveyors of the colonial project, sensing defeat, began a sustained period of emigration from the country. In 1960, at the peak of white settlement, there were 61,000 of them, compared to 53,000 three years later at the time of independence. By 1978, the total white population was estimated at 40,000 and were already being considered as "human souvenirs of another era" (Doro, 1979). However, Doro makes a distinction between the white community that was in the country as professionals serving the settler community, and the settlers themselves. The settlers who claimed Kenya as their motherland were slow to depart.

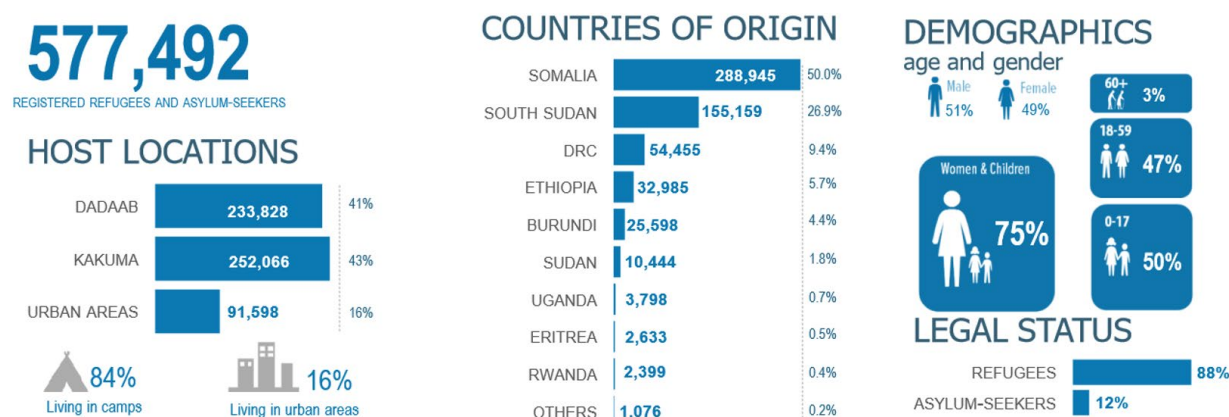
Emigration of native Kenyans also manifests in the tail-end period of the colonial project, and shortly after. This marked a period of education reforms, with a small number of natives emigrating for special skills development. Education then, as today, continues to be a significant factor for emigration from Kenya. The intensity of emigration has generally depended on the regimes in power. The first president, having himself been trained abroad, was an avid enabler of emigration for training. The rate declined during the reigns of President Moi. His era was marred with economic turbulence, particularly the unpopular IMF's structural adjustment programmes, and an attempted coup. Between 2000 and 2020, there was a 69% increase in outmigration, coinciding with the terms of the third and fourth presidents. Presently, the government not only encourages emigration for traditional reasons of education, health and prosperity, but is actively promoting it to combat local unemployment for both skilled and unskilled labour.

Post-colonial migration is predominantly marked by inward migration for several reasons. After independence, the first president set the tone for "perceived" foreigners in his victory speech. He said, "The rights of all and of their property will be fully protected" (Savage, 1970). Furthermore, the finance minister in that first year recognised the need for private investors to remit their profits and not to have their assets nationalised. These

assurances not only underscored the openness of the Kenyan government but set up the country as a thriving destination for working migrants or those with business interests. This was particularly true for returning settlers. It also played a key role in the establishment of offices for key agencies and international organisations headquartered in Nairobi. For example, UNEP, UN-HABITAT, World Agro-forestry Centre, among many others, have expatriate immigrants domiciled in Kenya.

Beyond economic motives, Kenya has played a key role in hosting and resettling refugees. Since independence, coups and political instability in neighbouring states, as well as victims of environmental disasters, have been hosted in the country. Located adjacent to the Horn of Africa, a region that is marred by conflict and drought, some of Kenya's unstable neighbours include Somalia, Ethiopia and South Sudan. As the largest regional economy, and having maintained relative stability, Kenya has evolved to become an important anchor state through which agents, foreign governments and multinational agencies implement their interventions in neighbouring countries (Hargrave et al., 2020). The United Nations High Commissioner for Refugees (UNHCR) estimates that Kenya is the fifth largest refugee-hosting country on the continent, holding approximately 577,000 refugees and asylum seekers (UNHCR, 2023). Figure 1 shows the breakdown of refugees and asylum seekers by sex, countries of origin and camp.

Figure 1: Registered Refugees and Asylum Seekers 2023



Source: UNHCR 2023

Post-colonial Kenya has witnessed significant internal migration. According to Oucho (1979), the migration processes that occurred during this period led to the development of administrative posts and boundaries. Additionally, the movement of various groups of people along infrastructure development lines resulted in the emergence of small and large towns, contributing to intense urbanisation that characterised the post-colonial period. Following the abolition of forced labour, as colonialism came to an end, Africans willingly migrated to workplaces to sell their labour and earn wages. Today, urbanisation and rural-urban migration continue to be major aspects of post-colonial migration in Kenya. Politics has played a role in internal displacement. Post-election tensions reached a peak in 2007, when more than 500,000 people were internally displaced because of disputed general elections (Yamano et al., 2010).

A notable phenomenon in Kenyan migration is the prevalence of 'return' migration. This refers to the compulsory or optional movement of an individual back to their native country after spending a minimum of one year abroad. Most of these return migrations to Kenya are voluntary. It is widely acknowledged among experts that one of the drawbacks of emigration is the loss of skilled individuals through brain drain. However, the decision to return mitigates this issue by reversing the impact of brain drain and enhancing the country's reputation for investments when the returnee invests the money they earned overseas. In 2015, a study carried out by the International Organization for Migration (IOM) demonstrated that approximately 89% of the Kenyan diaspora expressed their willingness to return to their homeland at some point (IOM, 2015).

Kenya has demonstrated its commitment to promoting mobility within the African continent by signing various legislative agreements and initiatives. East African Community (EAC), which Kenya is a part of, signed a common markets protocol in 2009, with ratification and enforcement following swiftly in 2010 (EAC, n.d.). One of the defining features of the protocol is the inclusion of a free movement of persons clause, which has greatly liberalised mobility of people in the region. As a member of other regional blocs such as the Intergovernmental Authority on Development (IGAD), and the Common Market for Eastern and Southern Africa (COMESA), Kenya has signed important protocols including the Free Movement and Transhumance Protocol of IGAD as well as the COMESA Protocol on the Free Movement of Persons, Labour, Services, and the Right of Establishment and Residence, both of which have not been ratified. Moreover, Kenya has also signed the Africa Free Movement of Persons (AFMP) alongside 30 other African countries but, like most, it has not domesticated it yet. Beyond these regional agreements, the country has bilateral and multilateral initiatives. For example, Kenya signed a bilateral visa-free agreement with South Africa as well as entering into an agreement with Uganda and Rwanda to dispense with passport requirements for their citizens (Hirsch, 2023). The last migratory development in Kenya was a government declaration for a visa-free policy regime beginning 2024. While visas were replaced with electronic transfer authorisations (eTAs), the waiting period was drastically reduced to 72 hours and fees slashed to \$30. Despite these efforts, Kenya's visa openness ranking remains mediocre, with a score of 0.396 and a ranking of 29th out of 54 countries (Adesina Akinwumi A., 2023).

04. MIGRATION TRENDS AND PATTERNS IN KENYA

This section summarises some of the earlier discussed developments in numbers and makes comparisons where possible. Figure 2 shows that in the 30 years up to 2020, Kenyan immigrants have outpaced not only population growth, but also emigrants, representing an increasing positive inflow of migrants. The country's 252% growth in immigrants, compared to the continent's 62% for the similar period, underscores Kenya's status as a migration hub. The migrant density crept upwards

steadily to a maximum of 2.4% in 2015. The 30-year high emigrant growth, linked to the high level of remittances earned (see later), suggests that skilled Kenyans often have a global orientation.

In 2020 data, Kenyan immigrants showed gender parity, with a mean age of 31.49 years. Their modal age groups are 0-5 and 25-29. The age group curve in Figure 2 shows a preponderance of young migrants in the immigrant population.

Figure 2: Visualisation of Key Kenya Statistics and Trends



Source: Michael Mutava calculations based on UNDESA tables 2020.

By 2020, there were more than half a million Kenyan emigrants abroad. Of these, 24% are hosted in other African countries and the rest outside the continent. Compared to most other African countries, Kenya is considered prosperous. Mutava (2023) highlights that most emigrants move to

regions of higher prosperity relative to their homes, hence it is unsurprising that more Kenyans migrate outside the continent. The Africa-based emigrants are mostly hosted in Southern African Development Communities (SADC) and EAC countries, with Uganda being the main African destination country.

Figure 3: Kenya as an Origin



Source: Michael Mutava calculations based on UNDESA tables 2020

The Central Bank of Kenya conducted a diaspora remittances survey in 2020 and found that most emigrants abroad had come from the urban centres of Nairobi, Kiambu, Nyeri, Nakuru, Mombasa and Kisumu (Central Bank of Kenya, 2021). These are relatively wealthy urban centres, which underscores the relationship between income and propensity

for emigration. As developing countries become richer, the propensity and capacity to emigrate rises (De Haas, 2023). Employment and education are the main reasons for Kenyans leaving the country. Citizens tend to find jobs in Asia and East Africa, and migrate to Europe, North America and Oceania for education as shown in Table 1.

Table 1: Reasons for Leaving Kenya by Region

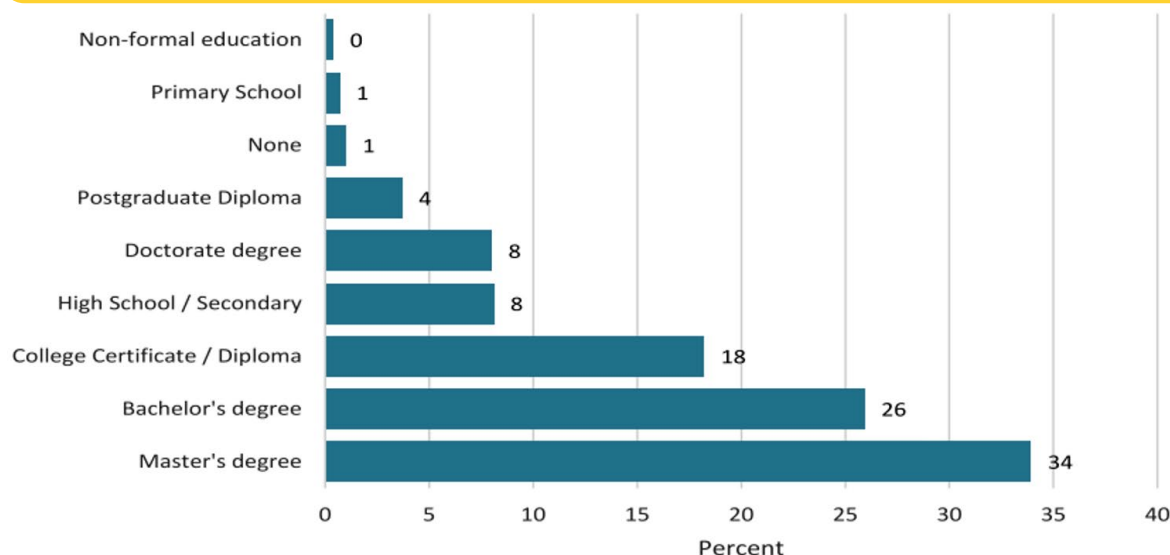
	Asia	East Africa	Europe	Latin America and the Caribbean	North America	Oceania	Rest of Africa
Employment	60.2	63.6	24.1	28	20.7	35.1	46.6
Education	24.1	13.6	37.8	36	47.9	45.9	23.7
Family moved	0.5	2.3	4.1	8	7.5	10.8	2.5
Marriage	3.2	4.5	13.1	0	6.1	0	5.9
Diplomatic duties in Kenyan missions abroad	4.2	6.8	5.8	4	0	0	8.5
Other (please specify)	0.9	4.5	6.2	0	6.8	2.7	3.4
Settlement	0.9	0	3.8	8	7.1	2.7	0.8
Diplomatic duties in international organizations	2.8	4.5	0.7	0	1.1	2.7	5.1
Religious duties	1.9	0	2.7	4	0.7	0	0.8
Asylum	0.9	0	0.7	4	1.4	0	1.7
Peace-keeping mission	0	0	0	8	0	0	0
Sports	0.5	0	1	0	0.4	0	0
Medical	0	0	0	0	0.4	0	0.8
Sum (%)	100	100	100	100	100	100	100

Source: Central Bank of Kenya: Diaspora and Remittances Survey 2021

Noting that employment and education are the greatest factors for emigrating Kenyans, the Central Bank survey found that more than half of survey respondents had at least a bachelor's degree. This finding underscores the role of

education in promoting migration. The major fields identified were business, finance and insurance, engineering and technology, as well as health and human medicine. Figure 4 shows the respondents by the highest level of education attained.

Figure 4: Highest Level of Education Attained in Respondent Emigrants

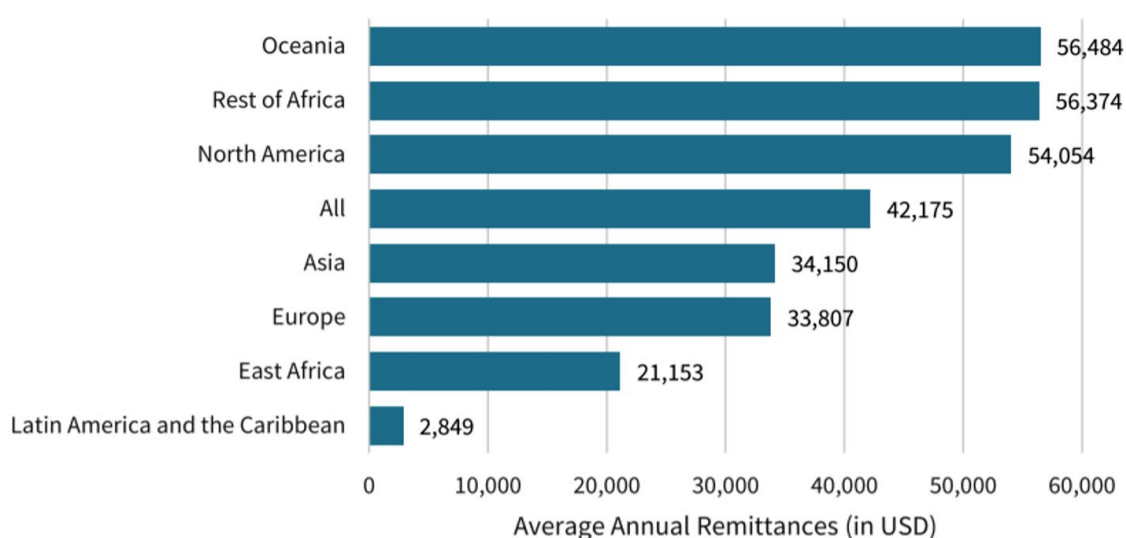


Source: Central Bank of Kenya: Diaspora and Remittances Survey 2021

The report also finds that half of Kenyans abroad have stayed for a period of 0-10 years. This is important because it was noted that longer stays abroad diminish sentimental attachment with the homeland hence resulting in lower and fewer remittances. The report finds that

the second highest average amount remitted was from 'Rest of Africa' as shown in Figure 5. It is therefore plausible to assume that Kenyan emigrants hosted by other African countries feel a stronger attachment with 'home' and therefore send back higher average incomes.

Figure 5: Average Annual Remittance in US Dollars by Region

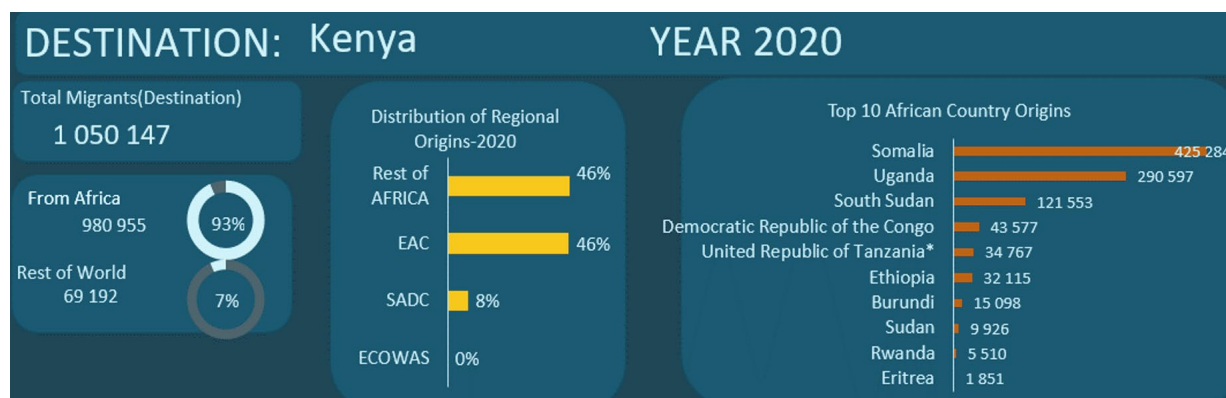


Source: Central Bank of Kenya: Diaspora and Remittances Survey 2021

Since 2010, Kenyan remittances have grown by nearly 500% to a figure of \$4 billion in 2022. Considering this is 4% of GDP, it has become a cornerstone of the economy. Coincidentally,

the top three African countries by destination for Kenyans also form the top three sources of African diaspora remittances, i.e., Uganda, Mozambique and Tanzania (Remitscope, 2022).

Figure 6: Kenya as a Destination



Source: Michael Mutava calculations based on UNDESA tables 2020

Figure 6 shows the sending regions for Kenya's one million immigrants. More than 90% come from other African countries. Somalia and Uganda are the top two African sending countries.

In 2022, outward remittances totalled \$589 million, with Uganda and Somalia representing the top 2 highest outbound remittance destinations respectively (Remitscope, 2022).

05.

MIGRATION POLICY

Kenya lacks a functional standalone migration policy. In 2017, one was drafted but is yet to be formally adopted by the government. Amadi (2024) notes that migration has many actors and stakeholders with varying but complementary interests. Therefore, the governance approach should ensure that the isolated moving parts are not only in sync with others, but also align with migration objectives. According to Balakian (2020), refugee resettlement in Kenya is accomplished through the administrative efforts of an unsynchronised assemblage of state and non-state actors with competing rather than complementing interests. Balakin's assessment is damning but only limited to a sub-component of the process of migration. In this section, we examine the setup of migration policy in Kenya as a whole, by looking at current provisions of migrants and areas of improvement.

5.1 Institutional Arrangements

Kenya has fast-changing political/administrative arrangements that expand or contract with prevailing circumstances. The longest-serving president, Moi, whose term ended in 2002, had only 16 cabinet members at the time of his retirement. When president Kibaki took over in 2003, he

appointed four more to make it 20. In the aftermath of the 2007/2008 post-election violence in Kenya, President Kibaki and Prime Minister Raila Odinga formed a grand coalition government that had 40 cabinet ministers and 51 assistants. During the term of the grand-coalition government, the two principals managed to lead the country into a constitutional moment, resulting in the promulgation of the 2010 Kenya constitution, which entrenched some design and structure in the system of governance. The first leadership under the new constitutional dispensation appointed 18 cabinet secretaries in their first term and exhausted the constitutionally allowable list of 22 in the second term. While there have been swift changes in the nomenclature and organisational set up of ministries and units of administration, the functional design has remained similar. For example, during the Kibaki era, the Ministry of Home Affairs was joined with the Office of the Vice Presidency, both of which do not exist now. In place of that, there is an Office of a Deputy President, and although nominally there is not a home affairs office, it functionally exists by another name: 'Ministry of Interior and Coordination of National Government'. In this section, we track recent developments in keeping with the country's relatively new constitution and recent nomenclature.



Migration issues are principally dealt with in the Ministry of Interior and Coordination of National Government. This ministry houses the Refugee Affairs Department responsible for the management of refugee camps, asylum processes and the protection services for both refugees and asylum seekers. It also houses the lead department in migration-related issues, the state Department of Immigration, Border Control and Citizen Services. This department is responsible for the bulk of migration policies, ranging from passport services, foreign nationals' management, citizenship services, work permits and passes, among others (The Kenya Citizenship and Immigration Act, 2011). The Ministry of Labour and Social Protection is responsible for labour migration management and publishes a quarterly national labour assessment report. It promotes fundamental rights of migrant workers, ensures compliance with international agreements such as those from the International Labour Organization (ILO), and advises on work permits, among other things. It is also charged with the implementation of various labour laws. The Ministry of Education oversees the conversion of foreign qualifications to local ones. Through the Commissioner for University Education, foreign degrees and diplomas can be converted to local equivalents. The Ministry of Foreign Affairs ensures that the diaspora community finds easier mechanisms to invest or remit money back home. It also ensures that the community abroad is still able to participate democratically by organising polling stations abroad in election years.

The National Coordination Mechanism on Migration (NCM) is tasked with the responsibility of steering migration dialogues and debates. This inter-agency institution is government led and was established in 2016 to fortify migration coordination at all levels of government. The agency has representation from 45 government and non-government actors and provides a crucial avenue for private sector

and civil society inputs in the migration discourse. Outside of government's framework, civil society also has impetus to affect migration through other channels. For example, in 2019, the Central Organisation of Trade Unions (COTU) Kenya and their Kuwait counterpart signed an agreement to jointly address issues of Kuwait Kenyan workers.

5.2 Immigration Policy

The first definitive attempt to govern migration in independent Kenya is contained in the Immigration Act of 1967. Overall, the Act provided the legal framework for managing immigration in Kenya, outlining procedures for entry, stay, and enforcement of immigration laws (Immigration Act, 1967). Before this, immigration policies were designed to serve the interests of the colonial regime, facilitating the influx of foreign labourers and limiting the mobility of natives. The 1967 Act had to define who a Kenyan was, and who was a foreigner, as well as prescribe of rights due to each with respect to migration. This was because re-entry was still possible and legal for former foreigners who still held citizenships abroad. Kenyans were free to enter and leave the country, but the foreigners that failed to obtain Kenyan citizenship or requisite permits had to be repatriated (Plender, 1971). Since then, Kenya has made further refinements to the Act and attendant regulations culminating in the formation of a single comprehensive and consolidated statute dubbed 'The Citizenship and Immigration Act 2011'. This is presently the primary legislation governing migration matters in Kenya.

Before 2024, Kenya operated six types of visas, granting access to the country depending on the duration or purpose of travel. All visas were automated and were paid for save for the 'courtesy visa'. Table 2 shows the different visa categories and their costs until the end of 2023.



Table 2: Kenya Types of Visas

Visa Types	Purpose	Duration	Fees
Single entry visa	Business, tourism, medical purposes, humanitarian purposes, school trip	Three months	\$51
Transit visa	Foreigners going through Kenya	24 to 72 hours	\$21
East African tourist visa	Tourism visa for Kenya, Uganda and Rwanda	Three months	\$101
Multiple entry visa	Foreigners needing to visit Kenya for the same reason as a tourist	Three to twelve months	\$101
Five-year multiple entry visa	Issued to USA citizens who need to stay in Kenya for business or tourism	Five years	\$161
Courtesy Visa	Holders of diplomatic, official, service passports	15 days to six months	Free

Source: Author compilation

Outside the visa framework, Kenya had other bilateral and multilateral agreements to ease movement. For example, in 2023, Kenya did not have visa requirement from 21 African countries, some of which she had reciprocal relationships with (Institute for Development Studies, 2022). In East Africa, Kenya, Rwanda and Uganda mutually dispensed with the need for a passport, requiring only a national identity document. Kenyans and some of their neighbours were increasingly edging tentatively towards an ‘East African’ identity, complementing their national identity.

Part VII (56)2 of the Immigration Act of 2011 requires that all foreigners residing in Kenya for a period exceeding 90 days be registered. Kenya, therefore, issues Foreign Nationals Certificates (Alien Card) for foreigners exceeding 90 days. The card is valid for two years and is renewable for a further two.

In the beginning of 2024, Kenya’s visa policy was abolished and replaced with an ‘Electronic Travel Authorisation’ system which was disingenuously labelled as ‘visa free’ by the government. Seychelles, Benin, The Gambia and Rwanda are the champions of visa free regimes on the continent, representing a flexible, unencumbered pre-travel and travelling process. By contrast, Kenya’s new process attracts a fee of \$30 and requires a pre-travel authorisation. Granted, the previous average cost of visa application was relatively high and the new system drastically lowers the cost and decreases the average waiting period to 72 hours. However,

the new model applies to all citizens of the world indiscriminately, essentially rolling back gains made with countries for which Kenya had pre-existing migration arrangements. EAC member states except for Somalia have been exempted from making an eTA application. The government has also completely waived the application fee for Ethiopia and South Africa while maintaining the eTA itself. Considering that before 2024, citizens of 21 African countries could access Kenya visa free, these policy twitches do not inspire enthusiasm. In 2023 and every year since the inception of visa free travel for all Africans, Seychelles still records higher numbers of tourists from Europe than from Africa (Betymie, 2023). Leaning on this insight, the government of Kenya appears to be moving towards easing access for extra-continental travellers and hoping to augment income by lowering both visa turnaround times and price. Indeed, this seems to be a rational step, but it could have been achieved without inadvertently hampering access for the rest of the continent. Moreover, if one assumes that the travelling community is affluent, that the cost of travel is high, and that the reduction in visa costs does not register significance on their budget, then it can be concluded that the demand for migration is inelastic and lowering prices may not translate into meaningful revenue gains.

Kenya issues several permit classes as listed in Table 3. Most of the classes attract heavy fees or proof of investment and funds for living. It is important to note that EAC members are not charged. Class D covers migrant employment.

Table 3: Permit Classes in Kenya

Permit Class	Reason
A	Prospecting and mining
B	Agriculture and animal husbandry
C	Prescribed profession
D	Employment
F	Specific manufacturing
G	Specific trade, business or consultancy
I	Approved religious or charitable activities
K	Ordinary residents
M	Refugees

Source: Author Compilation

The threat of terrorism informs Kenya’s anti-migrant sentiment. The April 2015 killing in cold blood of 147 students at Kenya’s Garissa University by terrorists affiliated with the Al-Shabaab terror gang led the government to commit to building a 700-kilometre wall between Kenya and Somalia (Cannon, 2016). Research shows that walls hardly ever accomplish stated goals, and often have unintended consequences (de Haas, 2023: 326-342). Nevertheless, it brings into sharp focus the issues of border control, bearing in mind that modern borders are ‘everywhere and nowhere’ (Khosravi, 2008). Nowhere because conventional borders are not fully restrictive, but more importantly there are new gateways that effectively serve as borders such as registration processes, employment permits and qualifications procedures deep within a country. In Kenya, the Border Management Division (BMD), in the Ministry of Interior and Coordination of National Government, established under the Immigration Act, controls and outlines rules, procedures and authorities responsible for managing the entry, stay and departure of individuals at Kenya’s borders. BMD designates entry and exit points, conducts border surveillance as well as uses technology and advanced information systems. The use of technology is progressive and in keeping with the evolving definition of borders today. BMD has the latitude to implement electronic visa systems and biometric identification tools among other sophisticated techniques to facilitate more efficient immigration.

BMD works closely with the Border Controls and Operations Coordination Committee (BCOCC), which is a multi-agency committee comprising representatives from various government agencies

involved in border management, including the Immigration Department, Kenya Revenue Authority (KRA), Kenya Ports Authority (KPA), Kenya Wildlife Service (KWS) and others. The committee coordinates border control activities. Given its varied stakeholder composition, the committee provides a whole-of-government approach to the issue of border control, as well as sharing intelligence and encouraging cross-border cooperation. Through the committee, Kenya has been able to collaborate with her neighbours on efforts to promote freer movement, for example, the establishment of EAC one-stop border posts in 2018 (EAC, 2018). These joint efforts are a better approach to border control as information sharing ensures that human trafficking, smuggling or security threats are more easily identified. Started in 2015 at a cost of \$35 million, the 700-kilometre proposed Kenya-Somalia border wall had only 10 kilometres completed by 2019 (BBC, 2019). Cross border cooperations are better for executing border security and management (IOM, 2021).

An immigration issue of key concern in Kenya is its stance regarding refugees. During a golden age, which spanned independence to 1990, refugee management was directly overseen by the government and there were no encampments. Refugees were able to integrate easily into Kenyan society, move freely and access employment. The 1967 Immigration Act introduced class M permits for refugees, but it did not provide much detail on their rights. However, in the period following 1990, the number of refugees increased significantly, coinciding with the collapse of the government in Somalia and the civil wars in Ethiopia and Sudan. This created a dilemma for the government,

grappling with complex questions of sovereignty, territory and citizenship (Agwanda, 2022). After the influx of refugees in 1991, the government stopped dealing with them directly and entrusted the role to UNHCR, which has since developed most of the camps. Additionally, the attitudes of Kenyans towards refugees have shifted, with many viewing them with suspicion due to the surge in crime rates and economic hardship of the mid-1990s. In 2006, the Refugees Act was enacted, which established government agencies to manage refugee affairs in the country, including the Refugee Affairs Committee, the Department of Refugee Affairs and the Refugee Affairs Board. This legislation allowed refugees to obtain work permits and support themselves, but it also contained a contradiction in that refugees were not permitted to move freely and were required to live in camps.

The Refugees Act was revised in 2014, requiring that refugees be restricted in two main refugee camps, namely Dadaab and Kakuma (Norwegian Refugee Council, 2018). Restricted mobility reduced livelihood opportunities and led to excessive reliance on humanitarian aid. The process of acquiring movement passes was not only opaque and arbitrary, but it was also unpredictable, leaving refugees feeling hopeless. The government preferred to put a cap on the number of refugees in the country per time, but luckily the move was declared unconstitutional by the high court. In 2013, a surge in terrorism led to the adoption of a repatriation policy, within which the government of Kenya committed to return Somalis back to Somalia. More than 80,000 Somalis have since been repatriated (UNHCR, n.d.).

For a considerable period, one of the reasons for the inadequate attention given to the refugee situation in Kenya was the perception that it was a transient issue, rather than a protracted one. However, recent years have witnessed a shift in thinking and, in 2017, the government, through the Intergovernmental Authority on Development (IGAD), adopted the 2017 Nairobi Declaration, which advocates for a transition from humanitarian aid to a more comprehensive, sustainable and broader development-oriented approach for managing refugees and host communities (UNHCR, 2019). Since then, several significant milestones have been achieved, with the most notable one being the enactment of a new refugees act in 2021. This law has provided access to education, livelihoods and integration for refugees, and it explicitly recognises their right to work. Additionally, it supports efforts to promote self-reliance among refugees and requires that they be issued with documentation to engage in gainful employment. Importantly, the new act allows for family reunification. The

2021 update of the 2006 refugee legislation expresses hope and optimism for empowerment of refugees, and their eventual integration in Kenya. Admittedly, Kenya's legal framework for refugee governance is still evolving and there are ongoing calls for the enactment of a comprehensive refugee legislation that aligns with international standards and provides greater clarity and certainty in the protection of refugees' rights and obligations.

The bulk of migration laws look at inward migration and very little regarding the reverse. In 2015 the 'Kenya Diaspora Policy' was formulated in close collaboration between the ministries of Foreign Affairs and Labour, Social Security and Services. The policy was developed to entrench the Kenyan diaspora into national development processes. Kenya's vision 2030 identifies diaspora contributions as one of the major enablers to the growth of the economy. The policy provides for the right to vote while in diaspora, the right to dual citizenship for citizens abroad, tapping into talents abroad to reverse brain drain, effective ways of remitting money home, among other services (G.O.K., 2014). Through the diaspora policy, the government also maps out a strategy to bring consular services to migrants abroad. Since 2015, the policy has neither been reviewed nor codified into law, but plans are underway to update and revise it, including institutionalising the diaspora community as the country's 48th county.

5.3 Labour Migration and Employment Policy

Kenya's work permit system includes several classes, each catering to different categories of foreign workers. Class D work permits in Kenya are specifically designed for foreign nationals seeking to work in Kenya. If granted, a class D work permit allows a foreign national to work and reside in Kenya. Class M allows a person with refugee status to take up employment or engage in a specific trade, occupation or profession. Notably, a spouse to a class M permit holder also has the same rights to employment as the holder. Finally, should a foreigner want to pursue business, a specific trade or some form of consultancy, they could apply for a class G permit. Pending the procurement of a long-term permit, applicants could also apply for shorter term permits called 'Special Passes' (The Kenya Citizenship and Immigration Regulations, 2012). Frequent application and renewal of special passes may sometimes provide a loophole to circumvent the permit system according to some experts.

A work permit usually entails a job offer from a Kenyan employer, who is also required to

Table 4: Distribution of Foreign-Born Employees by Level of Skill in Selected Countries 2019

Countries	High	Medium	Low	Others	Total
Kenya	344,609	1,208,132	730,424	17,083	2,300,248
Burkina Faso	45,656	81,356	10,434	11,601	149,047
Nigeria	39,582	124,336	N/A	N/A	172,752
Zambia	15,753	30,885	3,557	1,498	51,693
Côte d'Ivoire	15,181	1,189,672	56,711	20,344	1,281,908
Angola	13,170	91,496	7,012	5,139	116,817
Zimbabwe	3,652	35,425	11,455	-	50,532
Lesotho	2,229	2,915	1,830	-	6,974
Somalia	2,200	2,171	3,594	94	8,059
Guinea	803	4,842	727	26,078	32,450

Source: Author Aggregation from ILOSTAT International Labour Migration Statistics Database 2019
Foreign-Born population are individuals born outside the country of measurement

sponsor the application. Due to this additional burden, employers may be inclined to avoid the process unless the specific skill in question is highly specialised. Furthermore, the employer is often required to demonstrate that no Kenyan possesses the necessary competence for the vacancy. As a result, work permits are typically more readily granted and obtained for medium and highly skilled professionals. Table 4 shows that by 2019 the number of foreign born employees was highest in Kenya, among the countries considered. Noticeably, Kenya leads in the employment of medium and highly skilled foreign-born workers.

Once a migrant obtains a work permit, they are immediately covered by national labour laws, and are entitled to the rights, benefits and protections provided by such laws. These include minimum wages, occupational safety and health standards, the right to join labour unions, and others. The law mandates periodic inspections and oversight by government officials to ensure compliance with workplace standards. However, a former trade union leader disclosed that government surveillance is inadequate and only exists in a theoretical sense.

Whereas the law is quite straightforward about the process of migrant workers coming into the country, there is a grey area regarding workers leaving the country to look for employment abroad, particularly workers travelling to the Middle East. There has been a rising demand for low skilled workers in the Gulf countries, attracting workers in the hospitality, domestic and construction industries. As at 2023, it was estimated that 80,000 Kenyans were working in Saudi Arabia and a further 60,000 in the UAE, mainly as domestic workers (KIPPRA, 2023). The growth of the Gulf countries as important destination

countries is underscored by the fact that Saudi Arabia was the third largest source of remittances to Kenya in 2022. Despite this, Kenyan workers in these countries report poor working conditions ranging from long working hours to sexual exploitation, below average wage rates, harassment and violence, among others (KIPPRA, 2023).

According to a labour expert, there are no established government channels to intervene when Kenyan workers run into challenges abroad. In most cases, workers get into private arrangements with individual recruitment agencies who do not do much for them beyond connecting them to job vacancies. In recent years, the government of Kenya has signed multiple bilateral agreements with Saudi Arabia, UAE and, Qatar, among other countries, with an aim to secure the interests of migrant workers. Central Organisation of Trade Unions (COTU) of Kenya also entered a memorandum of understanding (MOU) with their Kuwait counterpart in 2019, to safeguard the rights of Kenyan migrant workers (IOM, 2022a). As an additional mitigation measure, government through the National Industrial Training Authority (NITA) has undertaken to improve the training of local workers as well as those travelling abroad. NITA offers pre-departure training to these workers to ensure integration in their destination countries.

The steps taken by government and the trade unions are laudable but are band-aid interventions incapable of succeeding as they are unable to alter power relations between employer and migrant employee. One factor is an oppressive system called the Kafala system. Through this system, individuals can sponsor migrant labourers and pay for their transport to the Gulf states, after which they bind them in contracts for certain

periods (Mlambo & Zubane, n.d.). Residency and work permits are conjoined, hence giving migrant workers little wiggle room in case of a kerfuffle with an employer. The upfront payment by the employers bestows an entitlement on the workers, seeing them as investments upon which a return must be made. A Kenyan parliamentary committee has found, and experts concur, that the bilateral agreements are not adequate and require revision, and the enforcement or implementation of Kenya's commitments to its guest workers in the Gulf is inadequate (Kenya Parliament, 2022).

Besides bilateral agreements to protect workers, there have also been Bilateral Labour Agreements that focus on expanding opportunities for expatriate workers. For example, in 2021 a new BLA between Kenya and the UK, in which the two countries agreed to cooperate on the healthcare work force of each country, was agreed. The government commits to training healthcare workers, especially nurses, and the UK government commits to absorbing them into the NHS in the agreement. The president also entered a similar deal with the German Chancellor, agreeing to train up to 250,000 Kenyans to plug professional and semi-professional vacancies in Germany (Press Statement by H.E. Hon. William Ruto, CGH, President of the Republic of Kenya and Commander-In-Chief of the Defence Forces at the Press Conference with the Chancellor of Germany Olaf Scholz, 2023). The focus on exporting labour could ostensibly reduce unemployment, but the unintended ramifications are hard to ignore. This includes brain drain in critically important sectors of the economy and an unsettling effect on the education system. The German deal comes with a requirement to tailor the education of some institutions to German specifications, including adopting the German language.

Within the East African Community (EAC), the system for the recognition of qualifications is quite well developed with agreements supporting institutions to provide recognition and to align standards within the East African Higher Education Area, agreed to in 2017 (Oucho, Kandlige & Kazmierkiewicz, 2023). However, Kenya has not established any regional, multilateral or bilateral agreements to facilitate the portability and transferability of social security benefits. Although the EAC common market protocol includes a draft social security portability bill, its completion has not yet been finalised (Peter & Tum, 2019). If this bill is not enacted, the government may face significant costs in providing insufficient benefits to returning migrant workers in their old age. However, several fellow members in the East African Community do not have social security systems equivalent to those in Kenya and Uganda, but even these two countries are not linking their social

security systems to accommodate labour migrants. While labour migration contributes to economic development and remittance inflows, it also poses risks to migrant workers, including exploitation and abuse, social insecurity and uncertainty. Therefore, it is essential for Kenya to adopt policies that protect the rights of migrant workers in both directions and promote their social and economic integration.

5.4 Other Reforms and Policy Proposals

The success of intra-African cross-border migration governance greatly depends on the cooperation of member states at both regional and continental levels. Kenya has played a pivotal role in promoting and implementing regional initiatives that facilitate free movement. For instance, the East African Common Market Protocol, to which Kenya is a signatory, has enabled the region to establish visa-free entry, harmonise permit procedures, issue e-passports and e-machine-readable travel documents. The issuance of an East African passport is an important step resulting from regional cooperation even though a migration expert interviewed during this research points out its weaknesses, particularly in the context of preferential or discriminatory treatment that may arise from the country label on the passport. Kenya continues to engage in dialogue and cooperation with other EAC member states to address challenges, share best practices and advance common goals towards deeper integration and harmonisation within the bloc.

Kenya is an active member of IGAD where efforts are being made to harmonise immigration policies, laws and regulations among member states. IGAD members also have programmes that enhance capacity building and technical assistance between member states. It is instructive to note that the formation of the National Coordination Mechanism on Migration (NCM), which has been pivotal in organising migration debates at the national and local government level, was the outcome of an IGAD resolution. Further, Kenya has been deliberately developing infrastructure projects that boost its connectivity to the IGAD region. Examples include the Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) Corridor, the Moyale-Addis Ababa Highway, and the Northern Corridor Transport Network, among others. Similar engagements have happened within the COMESA region. Kenya not only plays an active role in these blocs, but also provides a crucial leadership role to advance better migration governance. It lends technical support to other members and trains and builds their capacity to combat emerging issues in migration.

Beyond working with other states, Kenya collaborates closely with global institutions that foster the migration agenda, such as the IOM, the UNHCR and the ILO among others. Working with IOM, the government held a Regional Ministerial Forum on Migration for East and Horn of Africa (RMFM), which made a raft of proposals to achieve higher integration on labour and migration between and among countries in the region (IOM, 2022b). The forum brought together 11 countries belonging to different regional economic blocs in the region. In 2022, the Ministry of Labour collaborated with the IOM in launching an oversight mechanism to prevent human trafficking in private recruitment agencies sending migrant workers abroad. Through a community feedback programme, the partnership aimed at instilling greater transparency in the actions of all stakeholders involved in sending migrant workers abroad (IOM, 2022c).

In May 2021, Kenya became a member of the champion countries initiative for the Global Compact for Safe, Orderly and Regular Migration. Additionally, the country was the first in Africa to develop a comprehensive implementation plan for the same in 2023 (National Implementation Plan of the Global Compact for Safe, Orderly and Regular Migration in Kenya 2023 (2027, n.d.)). Kenya and the ILO partner on policy development and advocacy efforts aimed at protecting the rights and safety of migrant workers. Such efforts include supporting the development and implementation of laws, regulations and policies that promote decent work and ensure the protection of migrant workers' rights, including their safety and wellbeing. According to an expert, most of Kenya's labour laws are domestications of ILO standard legislations and regulations. The government has also ensured the ratification of most conventions on the protection of rights of all migrants and non-migrant workers alike. Kenya's most recent ratification of an International Labour Organization (ILO) convention was the Maritime Labour Convention, 2006 (MLC, 2006) in 2019. The Maritime Labour Convention, often referred to as the 'Seafarers' Bill of Rights', sets out minimum working and living standards for seafarers, covering a wide range of issues such as employment contracts, wages, working hours, accommodation, and health and safety protections (*Report on Ratification of the International Labour Organization Convention C188 (Work in Fishing Convention, 2007)*, 2021).

Civil society organisations (CSOs) have emerged as indispensable actors in promoting effective migration governance in Kenya. They play a key role in addressing migrant challenges through service provision, advocacy, research and community

engagement. As watchdogs and advocates, they hold governments and policymakers accountable for fulfilling their obligations towards migrants. Further, they document human rights violations, monitor policy implementation and conduct research to identify gaps in governance. In Kenya, these organisations provide essential services and support to migrants, including legal assistance, psychosocial support, healthcare, education and livelihood assistance.

In 2013, at the height of the terror attacks in Kenya, the government made a draconian decision to force all urban refugees and asylum seekers into designated refugee camps. The High Court overruled the decision as unconstitutional and in contravention of refugee rights (Kenyalaw, n.d.). It is noteworthy that a CSO – the 'Legal Advice Centre' more locally known as 'Kituo Cha Sheria' – together with seven others led the litigation and ensured that the rights of urban refugees were respected. In 2016, there was another watershed moment, when the government decided to shut down the two main refugee camps in the country. As before, 'Kituo Cha Sheria' together with another CSO, Kenya National Human Rights Commission (KNHCR), took the matter to court and procured a favourable decision, stopping any human rights abuses by the government. Therefore, the contribution of the civil society movement in Kenya cannot be understated. By the same token, the constitutional framework of Kenya, alongside the establishment of an independent judiciary, has played a pivotal role in safeguarding the rights of migrants within the country. The constitution, with its provisions delineating fundamental human rights and liberties, serves as a cornerstone for ensuring the protection and enforcement of migrant rights.

Migration governance in Kenya is a continually evolving process, and the country presently lacks a comprehensive national migration policy. The approach to migration governance is influenced by broader policy frameworks, civil society and advocacy interventions, and international commitments. In 2018, the National Cohesion and Integration Commission (NCM) attempted to draft a National Migration Policy, which was updated in 2021, but it remains unadopted (IOM, 2022a). The draft policy includes provisions for enhanced border surveillance, the improvement of existing crossing points' capacities, and the use of modern information and communications technology tools at entry ports. The reason for government's non-adoption of the policy is not immediately clear. Either way, migration will remain a complex and dynamic subject requiring a consultative approach and a commitment to constant improvement.

06.

REFLECTIONS ON POLICY AND IMPLEMENTATION

6.1 Discursive Gap

The gap between rhetoric and policy is mixed in Kenya. Generally, the country does not have a problem with migration in general, but the issue of who is migrating is unsettling as it is often hinged on national security. Spates of terrorist incidents have evoked emotive reactions from the political class in the past. The 2013 debate about banning urban refugees, as well as the 2016 rhetoric that mulled the complete closure of such camps, were never translated to policies. In 2015, the government mooted the idea of constructing a 700-kilometre wall between Kenya and Somalia, yet this was not anchored in law and not much was built. Over time, the propensity to associate migrants of Somali origin with national security issues has grown, and it tends to result in regressive migration ideologies rather than addressing glaring lapses in the national security systems. In late 2023, Somalia joined the EAC without any objection from Kenya as a key member state, suggesting that the threat is more perceived than actual.

In a more recent development, the president of Kenya made a promise to the community of nations that the country was moving to a visa-free regime at the beginning of 2024, without an accompanying legal framework, thereby allowing himself the flexibility to meet or miss the target. Eventually, what emerged was an eTA system that mimics an alternative visa process. Boasts about visa-free travel, juxtaposed with the lacklustre commitment to ratifying the Free Movement of Persons (FMP) protocol at the continental level, epitomises the discursive gap. The failed adoption of the draft National Migration Policy document also demonstrates uncertainty in the adoption and implementation of migration policy.

Kenya has undoubtedly shown commitment to promoting free movement and easing migration by putting in place enabling and binding legislation without impeaching the country's ethnocentric identity. Yet the laws and policies are both forward-looking and conservative. The formation of the national implementation plan for the global

compact for safe, orderly and regular migration is one such forward-looking initiative that demonstrates a willingness to embrace migration. The refugee laws and regulations on the other side are conservative, though the government is swift to domesticate external treaties and conventions on migration. Overall, the policies and practices may be in disharmony with each other, suggesting fragmented governance. For example, in 2022, when worker abuses were rife in Saudi Arabia, the foreign affairs ministry made a policy proposal to temporarily ban recruitment of workers, but the ministry of labour rejected the advisory, citing local unemployment (KIPPRRA, 2023). Kenya has a relatively complex legal and policy framework and continues to innovate, sometimes improvise, when new issues arise. But there is also evidence of hollow rhetoric from time to time.

6.2 Implementation Gap

On the one hand, gap between policies and implementation seems to depend on whether one is an emigrant or an immigrant. The government appears to respond with agility to Kenyans abroad. The diaspora policy, despite the fact that it is not enshrined as such in law, is one example of a policy that moved quickly from inception to implementation. Having been adopted in 2015, Kenyans in the diaspora were able to vote in the 2017 and 2022 general elections. There is also a clear commitment to increase and maintain links with the diaspora through regular surveys and investment fora, among other techniques. Recent government bilateral agreements to secure opportunities abroad have also been implemented, with the first batch of nurses travelling to join the National Health Service (NHS) in 2022 (Christian, 2022). The National Employment Authority (NEA) and National Industrial Training Authority (NITA) conduct regular training in preparation for labour migration.

On the other hand, progress within Kenya, which mostly has implications for immigrants, has been slow. A 2023 report on refugee access to work permits and licences indicates that refugees in Kenya had trouble getting work permits and business

licences, with business licenses being the easier of the two (Foni Joyce Vuni & Iragi Buhendwa, 2023). This is despite the 2021 Refugees Act update that liberalises this process for refugees and asylum seekers. It is noted in the report that refugees find the work permit application process unclear and difficult since it is executed digitally with no alternatives to the online platform.

National labour laws in Kenya are ineffectively executed. The migration framework aims to implement regular checks and surveillance to ensure the legality of workers, occupational safety and risk management standards, and deter malpractices such as human rights abuses. However, these checks are rarely carried out, leading to a culture of impunity and worker exploitation. For instance, workers may be underpaid, work in unsanitary conditions and, in recent years, Kenya has become a transit point for migrant workers to the Middle East, sometimes under conditions which would not meet Kenya's legal requirements (Dolan, 2020; Mlambo & Zubane, n.d.). The country has therefore failed to diligently police the application of labour law to immigrant and emigrant workers.

The primary cause of the implementation gap in Kenya is pervasive corruption. Government officials responsible for service delivery often demand bribes, offering services in exchange for cash or denying them when payment is refused. This corruption also undermines the border management system. Corruption is not only detrimental in terms of service delays, but it also perpetuates discrimination. To address the implementation gap, Kenya must strengthen anti-corruption measures, improve transparency and accountability within immigration and law enforcement agencies, enhance oversight mechanisms and promote ethical conduct among public officials.

6.3 Efficacy Gap

The relationship between migration outcomes and implemented laws is complex and varied. Noteworthy among these outcomes is the emergence of a dynamic and open economy, wherein migration serves as a catalyst for innovation, entrepreneurship and cultural exchange. Moreover, the societal perception of

migration has evolved to one where it is neither inherently politicised nor a subject of contentious political discourse. This underscores the efficacy of implemented laws in fostering an environment where migration is viewed through a lens of inclusivity, pragmatism and socio-economic opportunity, rather than solely as a political issue. On the flip side, the recent shift towards a visa-free dispensation in Kenya, intended to be a major milestone in the country's migration history, led to confusion and dissatisfaction among African countries. Discordant laws can hinder migration success, highlighting the need for a cohesive legal infrastructure.

Improving migration outcomes in Kenya is primarily a testament to the agency and resilience of migrants themselves, rather than solely a reflection of a successful legal framework. Despite the presence of migration laws and regulations, many migrants are driven by a combination of push and pull factors that transcend legal boundaries and compel them to seek better opportunities elsewhere. Economic hardships, political instability, environmental degradation and social inequalities often force individuals to leave their homes in search of safety, livelihoods and a better future for themselves and their families. These push factors exert immense pressure on migrants, propelling them to overcome legal barriers and navigate complex migration routes in pursuit of their aspirations.

The experiences of migrants in Kenya underscore the limitations of relying solely on legal frameworks to address migration challenges. While laws play a crucial role in shaping migration policies and providing a framework for governance, they often fail to fully capture the dynamic and multifaceted nature of migration processes. The repeated renewal of 'temporary' permits is one notable example pointed out by an expert. Migrants' agency in responding to their circumstances, making strategic decisions, and navigating legal and social landscapes demonstrates their resilience and determination in the face of adversity. Ultimately, improving migration outcomes requires a holistic approach that empowers migrants, addresses root causes of migration, and fosters inclusive policies and practices that recognize and support migrants' agency and contributions to society.

07.

THE POLITICAL ECONOMY OF MIGRATION IN KENYA

The political economy of migration in Kenya is a complex interplay of political, economic and social factors that shape the patterns, dynamics and governance of migration. Historically, Kenya has hosted traditional nomadic pastoral cross-border migrants with communal ties. Familial ties across borders tend to condense into strong bonds that make legal deterrents inconsequential. However, this type of migration is dwindling rather than increasing. The foreign-born population has expanded largely due to educational immigrants and job seekers (Hargrave et al., 2020). Besides being a major host of refugees, Kenya is arguably the most attractive country in the Horn of Africa region for labour immigration (Maastricht Graduate School of Governance, 2017). The expansion of the Kenyan economy has seen migrants traveling specifically to fill labour market gaps, particularly in the services and technology sectors. East African countries lead as labour source countries, but there is a growing population from Asian nations such as

Bangladesh, India and Pakistan. As a regional hub, the United Nations and several other organisations have established bases to conduct not just national activities, but those spanning the entire region.

According to the 2017 Gallup migration acceptance index that places the most welcoming countries at an index of 10 and the worst at zero, Kenya achieved an impressive score of 6.51, placing it among the most welcoming nations in Africa. For comparison, the world average was 5.3. Rwanda had a score of 8.16, while South Africa and Tanzania scored 4.98 and 4.82, respectively (Gallup, 2017). Table 5 shows a 2022 survey conducted by Afrobarometer revealed that more than half of Kenyans had a positive attitude towards living alongside immigrants. Another 24% had no strong feelings one way or the other. A possible explanation for this behaviour is the deep ethnicity and tribalism in Kenya where everyone is beholden to their community while tolerating others.

Table 5: Attitude of Kenyans towards Migrants

Q87D. For each of the following types of people, please tell me whether you would like having people from this group as neighbours, dislike it, or not care: Immigrants or foreign workers?

	Urban	Rural	Men	Women	Total
Strongly dislike	8.6	13.0	11.8	11.2	11.5
Somewhat dislike	9.9	13.5	10.0	14.5	12.3
Would not care	30.9	20.2	23.9	23.8	23.9
Somewhat like	32.3	35.8	33.8	35.4	34.6
Strongly like	18.1	17.2	20.3	14.7	17.5
Refused		0.0		0.1	0.0
Don't know	0.3	0.2	0.2	0.3	0.2

Source: Afrobarometer, 2022

With the exception of the encampment policy, Kenya has historically maintained a relatively positive relationship with immigrants, fostering a culture of coexistence and integration. Across various sectors of society, immigrants have contributed to Kenya's cultural diversity and social fabric. Many immigrants have actively participated in the host community workforce, enriching industries ranging from agriculture to commerce with their skills and expertise. In the

counties that host refugee camps, business owners employ both refugee and local youths. The host communities also sell products to the refugee and migrant communities, resulting in mutual dependence (Oka & Gengo, 2020). Further, the presence of immigrants has facilitated cultural exchange through intermarriages, enhancing Kenya's cosmopolitan identity. The attitude of Kenyans towards migrants is sometimes qualified depending on the origin country.

Internationally, the government decries the burden of immigration especially of refugees, but carefully curates a narrative of unity of purpose in handling humanitarian crisis at the regional level. The government leads with impressive legislation, but the zeal of implementation is scant. In 2016, the Department of Immigration issued a directive that prioritises Kenyans over foreigners in the labour market (Hargrave et al., 2020). Having barriers to the labour market has led to proliferation of informal labour and a surge in irregular entry.

The national government engages in campaigns against certain migrants. Most notable is the perceived security threat centred mostly on ethnic Somalis, and which dates back as early as the 1990s, when refugee numbers increased. Under the pretext of security, the government through the police metes out force in areas with a high concentration of Somali residents. Closely tied to this is a more pervasive anecdote about 'illegal immigrants' being linked to corruption and crime. This often sweeps across all those in the country without proper documentation. Some groups have also been singled out, especially those from Nigeria, China and Somalia (Hargrave et al., 2020). The use of ethnicity and documentation status to target specific groups raises concerns about discrimination and human rights violations.

There is a stark difference between the attitudes of the national government and those of the county governments towards migrants. The local governments appreciate that migrants have a role to play in enhancing community development. Further, in the face of fiscal constraints, thriving businesses especially in the arid and semi-arid areas contribute to revenue collection for local governments. Although the county governments deserve praise for their efforts to integrate migrant communities, it is important to note that there may be another motive at play. The treatment given to foreigners who have existing relationships with the locals could potentially influence voting patterns. This only happens in communities with a high migrant density, buoyed by cross-border migration.

Generally, migration is a relatively minor aspect of political rhetoric in Kenya, with its role often taking a backseat to more pressing domestic concerns. While it may feature in election-year debates, the involvement of political parties in migration issues is generally minimal. Since KANU's defeat in 2002, every election has produced a new ruling party, with political parties being primarily founded for the purpose of competing in elections. The focus is typically on personalities rather than policies, and there is no party particularly known for its stance on migrants. The general disposition of civil society organisations (CSOs) in Kenya towards migrants is favourable and protective. Apart from opposing tough government policies, these organisations have also evolved to wield influence. However, these CSOs may not always be easily accessible, and some may only focus on high-level policy matters rather than the day-to-day practical issues faced by migrants. Faith-based organisations often have a broader reach in addressing these issues, but are frequently underfunded.

The private sector is increasingly engaging with migrant issues, demonstrating a commitment to their integration rather than shying away from the challenges they present. Equity Bank in Kenya has been offering loans to refugees since 2019, while Safaricom Kenya has made interventions in the financial inclusion space as well as education (IFC, 2019). Safaricom developed a suite of products aimed at supporting refugees, and it also helped to bring technology into classrooms through the Instant Network School Program. Such initiatives can expedite the integration of migrants and enhance their independence. However, it is emerging that the interventions by the private sector need to be moderated through legislation or government action, because they often turn out experimental, and possibly predatory. Bhagat argues that refugee assistance intersects with the needs of private capital where refugees due to their social marginality are prone to experimentation in terms of financial inclusion (Bhagat, 2021). Nonetheless, the private sector is inventive in efforts to bypass government bureaucracy.

08.

SUMMING UP

The choice of Kenya as a destination country for migrants is not surprising, considering the country's history of protecting the rights and property of both natives and foreigners, while it is the strongest economy in the region. Since Jomo Kenyatta's 1963 victory speech, where he made this commitment, Kenya has become an increasingly popular destination for both forced and voluntary migrants. Forced migration encompasses refugees and asylum seekers, including victims of climate change or environmental degradation or events. As the 2022 Afrobarometer survey (Table 5) revealed, three-quarters of Kenyan citizens have a positive attitude towards having foreigners as neighbors or are neutral.

Labour migration in Kenya plays a significant role in both the national economy and the livelihoods of many Kenyans. The country experiences both emigration and immigration flows, with many Kenyan workers seeking employment opportunities abroad, particularly in Asia and other African countries. Emigration is driven by factors such as limited job opportunities, higher wages abroad, and the desire for better living standards, while Kenya attracts migrant workers from neighbouring countries, mainly in sectors like agriculture, construction and domestic work. However, labour migrants from Kenya still have inadequate legal protections, especially those in the informal sector. Efforts to address these issues include strengthening legal frameworks, enhancing bilateral agreements with destination countries and providing support services for returning migrants are still at an early stage.

Kenya's immigration policy is primarily governed by the Kenya Citizenship and Immigration Act. Until the end of 2023, the country generally welcomed tourists, investors and professionals, offering various visa categories to accommodate different purposes

of visit. Since the beginning of 2024, the government has moved onto an eTA system, that increases travel flexibility to Kenya, but sends a somewhat confusing message to countries on the African continent.

Work permits are necessary for foreigners seeking employment in Kenya, with strict regulations in place to ensure job opportunities for Kenyan citizens are prioritised, though some preferential arrangements do assist work seekers from some EAC partner countries in the region. Kenya has been implementing measures to address illegal immigration and enhance border security, including biometric systems and stricter enforcement of immigration laws.

Migration, both through the immigration of skilled migrants and through emigration, is a growing force driving Kenya's development, with diaspora remittances constituting a significant 4% of the country's GDP as of 2022. These financial inflows from Kenyan citizens residing abroad play a crucial role in bolstering household incomes, supporting local businesses and fuelling economic growth across various sectors.

The implementation of rules and policies is inconsistent, subject to corruption or misuse of regulations, or made inoperable due to contradictions in law. Regulations are often not enforced or are bypassed. In practice, the Kenyan state is pragmatic regarding immigration, balancing the need to facilitate legal migration for economic growth and cultural exchange with the necessity of protecting national security and sovereignty. While forced migrants are bargaining chips in the international arena, regionally they are common challenges or opportunities that foster unity and cooperation. Nevertheless, they are sometimes used as scapegoats for government shortcomings.

Besides government, various non-governmental organisations and civil society groups have contributed to the advancement of migration governance in Kenya. These entities frequently work in partnership with government agencies, international organisations and other stakeholders to address the challenges confronted by migrants, such as discrimination, exploitation and inadequate access to fundamental services. CSOs exert a considerable influence on government decisions and, where necessary, bridge the gap between policy and implementation through various initiatives. Closely related, the private sector has demonstrated a capacity for innovative approaches to migration issues and plays a critical role in developing a sustainable migration governance framework.

8.1 Matters Still to be Addressed or Finalised

Aside from the issues of corruption and laws and policies not implemented, several migration policy issues are notably unresolved in Kenya. Border management, especially with its neighbours, remains a challenge and a cause of friction. Kenya is a regional magnet and several of its neighbours are known for their political instability and/or climate vulnerability. The recent inclusion of South Sudan, the DRC and Somalia into the East African Community suggests that Kenya accepts that the ultimate solution is regional coordination and openness but, at present, refugees from these countries remain refugees.

A related unresolved matter is the management of asylum seekers and refugees. Kenya has vacillated between encampment and its alternatives, and on the issue of work permission and related rights. This needs to be worked through in regional, national and local forums before a workable set of policies is put in place.

A third area of policy uncertainty surrounds the right to work and related rights and benefits. Reaching even broader agreement on transferability of qualifications, and making

some progress regarding social security benefits within the region would serve to entrench the ideals of the Common Market protocol.

Finally, exactly how Kenya should guide and support its migrant workers working in other countries is still a matter for policy sharpening and implementation.

Yet the achievements of Kenya and the region in coordinating reforms regarding the movement of people should not be underestimated, especially in recent years. The progressive evolution of Kenya's migration policy and practice cannot be understood fully outside of its regional context. The re-establishment of the East African Community and the adoption of an East African Community Common Market Protocol in 2010 deepened regional cooperation in easing the movement of persons and strengthening their rights to reside, work and establish businesses in member states. Kenya also contributed to and benefitted from efforts to strengthen migration governance within IGAD. Both regional organisations play leading roles in the story of Kenya's migration reforms.

Though the diaspora policy has not yet been fully enshrined in law, Kenya's relationship with its diaspora has progressed well in recent years. Kenya is more comfortable than some other African countries with the notion of its citizens working and living abroad and continues to find new ways to include them in the story of Kenya's development.

While the policy and institutional framework is not complete, Kenya has made a considerable investment in it in recent years. Initiatives include the strengthening of government agencies responsible for migration management such as the Department of Immigration Services and the Refugee Affairs Secretariat. The National Coordination Mechanism on Migration which brings civil society and government together has been another valuable innovation. Underlying the integrity of these and related institutions is Kenya's constitution and the judiciary that protects its values.

Categories of people interviewed

1. Director, Legal and Corporate Affairs COMESA
2. President of ECOSOCC Kenya as a representative of the civil society in Kenya
3. Migration Expert and Policy Analyst
4. A Former Trade Unionist

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TECHNICAL DATA

First edition. Johannesburg, August 2024.

This document was edited by the New South Institute (NSI) staff, but opinions expressed here do not necessarily represent the views of the organization, rather those of the authors.

GRAPHIC DESIGN

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