GJK

GLOBAL JUSTICE KENYA

PATHWAYS TO JUSTICE:

A PRACTICAL GUIDE TO REMEDIES AND ADVOCACY FOR KENYAN MIGRANT WORKERS

EMPOWERING SURVIVORS.
ADVANCING JUSTICE.



ACCESS TO JUSTICE | PROTECTION | ACCOUNTABILITY | ADVOCACY | PARTNERSHIPS

www.globaljustice.org

PATHWAYS TO JUSTICE

A Practical Guide to Remedies and Advocacy for Kenyan Migrant Workers

Prepared by

Valentina Cominetti

Global Justice Kenya

October 2026

Nairobi, Kenya

Version: 01

Copyright © 2026 Global Justice Kenya. All rights reserved.
No part of this publication may be reproduced, modified, distributed, or used for commercial purposes without the prior written permission of Global Justice Kenya, except as permitted by applicable copyright law.

GJK
GLOBAL JUSTICE KENYA

Table of Contents

Foreword 1

Acknowledgements 4

Purpose and Audience of this Legal Roadmap 6

How to Use this Legal Roadmap 6

Building a Collaborative Ecosystem for Access to Justice 8

Complementary Instruments 9

Introduction 10

Labour Migration, Economic Pressures, and Expanding Risks in Africa 10

The Convergence Between Labour Migration and Human Trafficking 11

Access to Justice and the Meaning of Remedy in the context of Labour Migration 12

Bridging Transnational Labour Migration-Related Abuses and Domestic Accountability in Kenya 13

Chapter 1: Labour Migration in Kenya: Trends, Violations, and Governance Framework 16

1.1 Labour Migration Trends in Kenya 17

1.2 Main Patterns of Violations in the Labour Migration Context 18

1.3 International and Regional Legal Framework 21

Bilateral Labour Agreements 22

1.4 Legal Framework Governing Labour Migration in Kenya 24

1.4.1 Constitution of Kenya, 2010 24

1.4.2 Labour Institutions Act, 2007 26

1.4.3 Employment Act, 2007 27

1.4.4 The Employment and Labour Relations Court Act 30

1.4.5 Counter-Trafficking in Persons Act, 2010 31

1.4.6 National Policy on Labour Migration 32

1.4.7 Labour Migration Management Bill, 2024 33

1.5 Institutional Framework Governing Labour Migration in Kenya 34

1.5.1 Ministry of Labour and Social Protection 35

Directorate of Labour Migration Management 35

Labour Migration Desks at International Airports 36

Multi-Agency Task Force on Overseas Job Scams 37
1.5.2 National Employment Authority (NEA) 38
1.5.3 Ministry of Foreign and Diaspora Affairs 39
1.5.4 Counter-Trafficking in Persons Structures 39
1.5.5 Judiciary 40
1.5.6 Migrant Worker Resource Centres 41
1.5.7 Trade Unions 41
Central Organization of Trade Unions (COTU-Kenya) 41
Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) 42
1.5.8 Civil Society Organizations (CSOs) 42
1.5.9 Law Society of Kenya-LSK 43
Conclusion 44
Chapter 2: Judicial Remedies Available to Migrant Workers in Kenya 46
2.1 Criminal Liability 48
2.1.1 Principal Criminal Frameworks Applicable to Migrant Worker Exploitation 50
2.1.2 Labour Institutions Act, 2007 50
2.1.3 Employment Act, 2007 51
2.1.4 Counter-Trafficking in Persons Act, 2010 52
2.1.5 Reporting and Investigation Mechanisms for Public Prosecution 54
Reporting of Cases to the Police and the ODPP 55
Cross-Border Cooperation and Transnational Investigations 56
Victim and Witness Protection Considerations 57
2.1.6 Public Prosecution in Practice 58
2.1.7 Private Prosecution 60
2.2 Civil Liability 60
2.2.1 Constitutional Claims 64
2.2.2 Tort Claims 65
2.2.3 Contractual Claims 67
2.2.4 Recent Judicial Developments in Labour Migration Litigation 70

2.2.5 Security Bond Claims 71
2.2.6 Mareva Injunctions (Freezing Orders) 71
2.2.7 Enforcement of Civil Judgments 72
2.3 Cost Mitigation Measures and Financial Support Mechanisms 73
2.3.1 Exemption of Court Fees in Trafficking-Related Claims 74
2.3.2 Class Actions, Representative Litigation, and the Mutunga Rules 74
2.3.3 Legal Aid and Pro Bono Representation 76
2.3.4 National Assistance Trust Fund for Victims of Trafficking in Persons 77
2.3.5 Remaining Structural Challenges 79
2.4 Relevant Evidence and Witness Preparation 79
2.4.1 The Role of Evidence in Labour Migration Litigation 79
2.4.2 Evidentiary and Documentation Considerations During Investigations 81
2.4.3 Electronic Evidence and Digital Communications 83
2.4.4 Correspondence, Documentary Evidence, and Supporting Materials 84
2.4.5 Admissibility of Evidence Under Kenyan Law 85
2.4.6 Access to Information and Evidentiary Asymmetry 86
2.4.7 Witness Testimony and Survivor-Centred Documentation 87
2.4.8 Witness Preparation and Protection Measures 88
Chapter 3: Non-Judicial Remedies and Access Pathways for Migrant Workers 89
3.1 Non-Judicial Remedies and Access Pathways 89
3.1.1 Civil Society Organizations (“CSOs”) 91
3.2 Alternative Dispute Resolution (ADR) 92
Survivor-Centred Considerations Before ADR 93
3.2.1 Mediation (Including Hybrid Court-Annexed Model) 93
3.2.2 Arbitration 96
3.2.3 Negotiation 98
3.3 Administrative Remedies 100
3.3.1 Ministry of Labour (MoL) 101
3.3.2 National Employment Authority (NEA) 103
3.3.3 Kenya National Commission on Human Rights (KNCHR) 104

3.3.4 National Assistance Trust Fund (NATF) and Vulnerability Support Mechanisms 105
3.3.5 Administrative Responses to Identity Document Violations 106
3.4 Informal Remedies 107
3.4.1 Trade Unions and Workers' Associations 108
3.4.2 Local Administration (Chiefs and Village Elders) 109
3.4.3 Faith-Based Institutions 109
3.5 Navigating Non-Judicial Remedy Pathways 110
Chapter 4: Advocacy and Strategic Engagement as a Pathway to Remedy 112
4.1 The Importance of Evidence-Based and Strategic Advocacy 113
4.2 National Advocacy Pathways for Securing Remedies 116
4.3 Regional Advocacy Pathways for Securing Remedies 118
4.3.1 East African Court of Justice 119
4.3.2 African Commission on Human and Peoples' Rights 120
4.3.3 African Court on Human and Peoples' Rights 121
4.4 International Advocacy Pathways for Securing Remedies 121
4.4.1 United Nations Special Procedures 123
4.4.2 Human Rights Council Complaint Procedure 124
4.4.3 Treaty Body Reporting and Periodic Review Processes 124
4.4.4 International Labour Organization Mechanisms 125
4.4.5 UN Working Group on Business and Human Rights 126
Chapter 5: Cross-Cutting Vulnerabilities, Gender, and Access to Justice 127
5.1 Why Vulnerability Matters for Access to Justice and Effective Remedy 127
5.2 Cross-Cutting Vulnerabilities Throughout the Migration Cycle 129
5.2.1 Economic Vulnerability and the Drivers of Migration 130
5.2.2 Information and Knowledge Vulnerabilities 131
5.2.3 Migration Status Vulnerability 132
5.2.4 Language, Literacy and Communication Barriers 132
5.2.5 Disability and Health-Related Vulnerabilities 132
5.3 Gendered Dimensions of Labour Migration 133
5.3.1 The Arab Labour Migration Corridor and Gendered Vulnerabilities 135

5.3.2 Sexual and Gender-Based Violence 136
5.3.3 Reproductive Vulnerabilities and Pregnancy-Related Harm 136
5.4 International and Regional Standards 137
5.4.1 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 138
5.4.2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) 138
5.4.3 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) 138
5.4.4 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) 139
5.4.5 International Covenant on Civil and Political Rights (ICCPR) 139
5.4.6 International Covenant on Economic, Social and Cultural Rights (ICESCR) 139
5.4.7 ILO Convention No. 189 concerning Decent Work for Domestic Workers 140
5.4.8 ILO Convention No. 190 concerning Violence and Harassment in the World of Work 140
5.4.9 African Charter on Human and Peoples' Rights 140
5.4.10 Convention on the Rights of the Child (CRC) 141
5.8 Towards Gender-Transformative Access to Justice 141
5.8.1 Holistic and Survivor-Centred Remedies: The "Basket of Care" Approach 143
6. Towards Effective Access to Justice for Migrant Workers 145
Bibliography 146

Foreword

"Labour is not a commodity."

— Declaration of Philadelphia, International Labour Organization (1944)

Labour migration has become one of the defining realities of contemporary Kenya. Every year, hundreds of thousands of Kenyans leave their homes in search of employment opportunities abroad, driven by aspirations for a better future, economic necessity, and the hope of supporting their families. Their labour contributes significantly to household livelihoods and to the national economy. Yet the expansion of labour migration must be accompanied by equally robust protections for workers' rights and dignity.

Across multiple migration corridors, Kenyan workers continue to face exploitation, including forced labour, human trafficking, debt bondage, wage theft, physical violence, sexual abuse, arbitrary detention, coercion, and other serious violations of human rights. Some are trapped in private homes under conditions amounting to modern slavery. Others find themselves recruited into scam compounds in Southeast Asia and subjected to forced criminality under threats of violence. Women have been deceived into situations of sexual exploitation abroad. Thousands have been deceived into circumstances exposing them to armed conflict and grave security risks. Many return home physically, psychologically, and financially harmed, while others never return at all.

The scale of this crisis is difficult to ignore. Evidence gathered across migration corridors demonstrates that exploitation is not the exception but often a systemic feature of unsafe migration systems. A study conducted by NORC at the University of Chicago found that 98.73 percent of recently returned Kenyan migrant workers from Gulf countries experienced multiple indicators of forced labour[1]. While migrant domestic workers, particularly women employed in private households, remain among the most vulnerable and most frequently abused categories of migrant workers, exploitation affects individuals across sectors, genders, destinations, and migration pathways.

As reflected throughout this Roadmap, economic desperation often creates the conditions in which exploitation flourishes. Workers migrate for many reasons, including personal aspirations, economic opportunities, security, and the desire to improve their lives and support their families. When structural factors such as poverty, unemployment, inequality, debt, and lack of opportunity intersect with weak regulation, unethical recruitment practices, and inadequate protection systems, vulnerability becomes a commodity from which others profit. The result is a migration system in which the promise of decent work too often conceals realities of abuse, coercion, and exploitation.

[1] NORC at the University of Chicago, *Forced Labor Among Kenyan Migrant Workers In The Gulf Cooperation Council (Gcc) Countries: A Prevalence Estimation Report,* December 2021.

The human cost of these abuses extends far beyond individual victims. Families are pushed deeper into poverty. Communities lose trust in institutions meant to protect them. Exploitative actors continue to profit with impunity. Most importantly, fundamental human dignity is diminished whenever human beings are treated as commodities rather than rights holders.

Over the past three years, Global Justice Kenya has documented hundreds of cases involving labour exploitation, human trafficking, forced labour, recruitment fraud, abandonment, wage theft, sexual violence, unlawful detention, and other abuses affecting Kenyan migrant workers across multiple migration corridors, while supporting rescue, repatriation, legal referral, and accountability efforts on behalf of survivors. One lesson has emerged consistently from this work: obtaining justice is often as difficult as escaping exploitation itself.

Despite the existence of important legal protections under Kenyan law, international human rights law, labour standards, and anti-trafficking frameworks, many survivors remain unable to access meaningful remedies. The challenge is rarely the complete absence of legal mechanisms. Rather, it is the gap between legal frameworks on paper and their implementation in practice. Workers frequently encounter barriers relating to cost, lack of information, jurisdictional complexity, evidentiary challenges, institutional fragmentation, inadequate legal representation, fear of retaliation, and limited enforcement of existing protections. As a result, violations that should generate accountability too often remain unreported, uninvestigated, and unremedied.

This Roadmap was developed in response to that implementation gap.

Drawing upon legal research, documented case experiences, international standards, comparative practices, emerging jurisprudence, and lessons learned through engagement with survivors and practitioners, the Roadmap seeks to identify, analyze, and systematize the full spectrum of remedies available to Kenyan migrant workers and to bridge the gap between Kenya's existing remedial framework and its implementation in practice. It maps judicial, administrative, labour, civil, criminal, alternative dispute resolution, regional, international, and advocacy-based mechanisms through which accountability and redress may be pursued. It also recognizes that effective remedies frequently require the strategic use of multiple pathways operating simultaneously rather than reliance upon a single institution or procedure.

Importantly, this publication adopts a broad understanding of justice. Accountability is not limited to criminal convictions or financial compensation. Effective remedies may include restitution, rehabilitation, medical and psychosocial support, legal recognition of harm suffered, institutional reform, guarantees of non-repetition, policy change, and other measures capable of restoring dignity and agency to survivors. Access to justice must therefore be understood not merely as a legal outcome but as a process of empowerment through which rights become meaningful in practice.

The importance of remedies extends beyond individual cases. Every successful complaint, administrative sanction, civil judgment, criminal prosecution, policy reform, or advocacy

intervention contributes to broader systemic change. Effective remedies increase the cost of exploitation, deter future abuses, strengthen accountability institutions, expose structural failures, generate evidence for reform, and help transform migration governance systems that have too often prioritized labour export over worker protection. Justice for one worker can become protection for thousands more.

This Roadmap is intended as a practical resource for migrant workers, lawyers, judges, prosecutors, labour officers, investigators, civil society organizations, trade unions, researchers, policymakers, and advocates committed to strengthening accountability and advancing the rights of migrant workers. It is our hope that it will help bridge the gap between rights and remedies, between law and implementation, and ultimately between injustice and accountability.

Migration should never require individuals to surrender their dignity, freedom, safety, or fundamental rights. Ensuring access to effective remedies is not simply a legal obligation; it is a moral imperative. The pursuit of justice for migrant workers is therefore not only about addressing past harms but about creating the conditions necessary to prevent future exploitation and build migration systems grounded in dignity, accountability, and respect for human rights.

Because decent work is a human right, and it should be a reality for everyone, everywhere.

Valentina Cominetti
Executive Director
Global Justice Kenya

Acknowledgements

This Roadmap is the product of a collective effort informed by the experiences, expertise, and commitment of numerous individuals and institutions working to advance the rights of migrant workers and strengthen access to justice.

Above all, we wish to acknowledge the courage, resilience, and determination of migrant workers and survivors of exploitation whose experiences have shaped both the understanding of the challenges addressed in this publication and the search for meaningful solutions. Their willingness to share their stories has contributed immeasurably to the evidence base from which this Roadmap emerged. Their pursuit of dignity, accountability, and remedy remains the inspiration behind this work.

We are equally grateful to the families of migrant workers, survivor networks, community advocates, trade unions, and the many individuals and organizations that continue to provide assistance, solidarity, and support to migrant workers. Their efforts demonstrate the vital role that communities play in protecting rights and promoting access to justice.

We are particularly grateful to the stakeholders who participated in the validation of this Roadmap, including representatives from relevant government ministries and agencies, the National Employment Authority, labour officers, members of the judiciary, legal practitioners, legal aid organizations, representatives of civil society organizations, faith-based institutions, trade unions, academic institutions, and international partners. Their expertise and practical experience contributed significantly to refining the Roadmap and ensuring that it responds to the realities faced by migrant workers and those supporting them in their pursuit of justice and remedies.

We would also like to express our profound gratitude to the Thomson Reuters Foundation and its TrustLaw program. Through the generous support of pro bono legal experts and researchers, TrustLaw contributed significantly to the legal research and analysis that informed important aspects of the work from which this Roadmap stems.

We are especially grateful to the International Labour Organization through the FAIRWAY Program funded by the Swiss Development Cooperation (SDC), whose support made the development, validation, and dissemination of this Roadmap possible. By investing in practical tools that strengthen access to justice and accountability, the program has contributed to efforts aimed at transforming legal protections into tangible remedies for migrant workers.

We also wish to express our sincere appreciation to Professor Lindsay M. Harris, Director of the International Human Rights Clinic at the University of San Francisco School of Law, for her longstanding collaboration and support. Through the Clinic's partnership with Global Justice Kenya, Professor Harris has contributed to the development and early operationalization of innovative access-to-justice strategies for Kenyan women migrant workers, including survivor-centred documentation initiatives and gender-transformative engagement with international

accountability mechanisms. Her work has helped inform the Roadmap's discussion of advocacy as a remedy and has contributed valuable evidence and analysis regarding the gendered dimensions of labour exploitation and barriers to justice experienced by women migrant workers.

This publication also reflects the dedication and commitment of the team at Global Justice Kenya. We extend our appreciation to Brenda Itumo, Joy Ndanu, Martin Kimathi, Naomi Nzilani and Patrick Kiernan, for their contributions to the organization's documentation, research, survivor engagement, advocacy, and access-to-justice initiatives that informed this work. Special recognition is due to Valentina Cominetti, Executive Director of Global Justice Kenya, whose leadership, vision, and commitment to survivor-centred justice guided the development of this Roadmap from its inception.

Finally, we acknowledge all those who continue to work towards a world in which migration is safe, rights-based, and grounded in respect for human dignity. Advancing access to justice for migrant workers requires sustained collaboration among governments, international organizations, civil society, legal practitioners, employers, trade unions, faith communities, and migrant workers themselves. It is our hope that this Roadmap will contribute to that shared endeavor.

Purpose and Audience of this Legal Roadmap

This Legal Roadmap seeks to provide a practical and accessible guide to the various avenues for access to justice, protection, assistance, accountability, and effective remedy that may be pursued within the Kenyan legal framework by migrant workers and, where relevant, their families, at different stages of the migration cycle. This includes remedies and protective measures that may be sought before departure and upon return, particularly in cases where violations arise during recruitment, deployment, or employment processes, as well as, in certain circumstances, access to repatriation assistance and related protective interventions for workers facing situations of distress abroad.

The Roadmap examines judicial, administrative, quasi-judicial, informal, and alternative dispute resolution mechanisms available within Kenya, while also identifying opportunities for advocacy and engagement at the national, regional, and international levels.

The Roadmap is directed not only at legal practitioners and judges, but also at the broader ecosystem of actors capable of catalyzing access to justice for migrant workers. This includes legal aid organizations, trade unions, civil society organizations, migrant resource centres, paralegals, government institutions, human rights actors, survivor networks, and other institutions involved in labour migration governance and migrant protection.

The objective is not merely to map existing laws and institutions, but to support the practical operationalization of effective remedy. By identifying available pathways, clarifying procedural options, strengthening institutional coordination, and promoting strategic approaches to accountability, the Roadmap seeks to transform legal protections from abstract guarantees into practical and enforceable avenues toward justice.

How to Use this Legal Roadmap

To facilitate practical use across different stakeholders and operational contexts, the Roadmap is structured as a modular and multidisciplinary tool that may be consulted comprehensively or selectively depending on the user's role, mandate, and operational needs.

Legal Framework on Labour Migration in Kenya

The Roadmap first introduces the legal and institutional framework governing labour migration in Kenya. This section provides the foundation for all remedy pathways by explaining the laws, policies, institutions, and regulatory mechanisms that shape recruitment, deployment, protection, oversight, and accountability.

It examines the Kenyan labour migration framework, including the regulation of recruitment agencies, foreign contracts of service, pre-departure procedures, state oversight bodies, labour

migration institutions, anti-trafficking protections, labour rights guarantees, and relevant administrative and enforcement mechanisms.

Judicial Remedies

The judicial remedies section examines formal legal avenues for accountability and redress. It is primarily directed toward lawyers, judges, legal aid providers, and justice actors involved in litigation or adjudication.

It addresses civil liability, criminal accountability, labour claims, trafficking-related remedies, evidentiary considerations, jurisdictional issues, procedural pathways, strategic litigation opportunities, and enforcement considerations relevant to migrant worker cases.

Non-Judicial Remedies

Recognizing that many migrant workers face significant barriers in accessing formal courts, the Roadmap also examines non-judicial and alternative avenues for remedy.

Non-judicial avenues include administrative complaint mechanisms, labour dispute resolution procedures, national human rights institutions, state-based protection and assistance systems, mediation and conciliation processes, trade union interventions, and informal or community-based pathways for support and dispute resolution.

Advocacy and Strategic Engagement

Because effective access to justice often requires structural and institutional change, the Roadmap also addresses advocacy pathways at the national, regional, and international levels.

This section examines policy advocacy, institutional engagement, survivor-led advocacy, strategic use of regional and international mechanisms, and broader efforts aimed at strengthening accountability and labour migration governance.

Cross-Cutting Vulnerabilities and Gender-Transformative Approaches

The Roadmap contains a dedicated cross-cutting section on vulnerabilities affecting migrant workers throughout the migration cycle, including the specific and intersectional risks faced by women migrant workers, domestic workers, survivors of trafficking, undocumented migrants, and other particularly vulnerable groups.

A gender-transformative approach is integrated throughout the Roadmap. This approach seeks not only to address gender-specific harms and vulnerabilities, but also to confront the structural inequalities, discriminatory social norms, and power imbalances that contribute to exploitation and restrict access to justice for women migrant workers and other marginalized groups. In the context of labour migration, women, particularly migrant domestic workers, often face intersecting forms of discrimination linked to gender, migration status, socioeconomic vulnerability, and the

undervaluation of care and domestic work, all of which may heighten exposure to abuse while simultaneously limiting access to protection and remedy.

In recognition of the central importance of these issues, the Roadmap includes a dedicated section under vulnerabilities specifically examining the gendered dimensions of labour migration, the particular barriers faced by women migrant workers in accessing justice and remedy, and the application of gender-transformative approaches within accountability and protection processes.

Building a Collaborative Ecosystem for Access to Justice

Users are encouraged to consult directly the sections most relevant to their role, expertise, or operational needs. The judicial remedies section may be of particular relevance to legal practitioners, judges, legal aid providers, and other justice actors engaged in litigation and formal accountability processes. The non-judicial remedies section may be especially useful for civil society organizations, migrant resource centres, frontline responders, trade unions, paralegals, and other actors involved in facilitating referrals, protection, assistance, and access to remedy outside formal court proceedings.

Similarly, the advocacy section is intended to support civil society organizations, survivor networks, human rights actors, researchers, and the broader community engaged in policy reform, awareness-raising, institutional engagement, and strategic advocacy at the national, regional, and international levels. The cross-cutting vulnerabilities and gender-transformative sections may be of particular interest to gender experts, feminist organizations, survivor advocates, protection actors, and practitioners working on intersectional vulnerabilities and rights-based approaches to labour migration governance and access to justice.

The interconnected structure of the Roadmap reflects the reality that effective access to justice for migrant workers often requires coordinated action across multiple actors, institutions, and remedy pathways. Judicial accountability, administrative interventions, survivor support, documentation, advocacy, and institutional reform should therefore be understood not as isolated mechanisms, but as complementary components of a broader ecosystem of access to justice and effective remedy for migrant workers.

Accordingly, this Roadmap seeks not only to map available legal and institutional pathways, but also to contribute to the strengthening of a more coordinated, informed, and collaborative ecosystem capable of supporting migrant workers in accessing protection, accountability, and remedy. By clarifying the interaction between legal frameworks, institutional mandates, documentation practices, protection systems, and advocacy strategies, the Roadmap seeks to strengthen cooperation among justice actors, civil society organizations, state institutions, legal practitioners, and frontline responders.

Complementary Instruments

This Roadmap is complemented by three additional practical instruments designed to support different categories of users and operational needs.

1. From Evidence to Remedy: A Practical Handbook for Civil Society Documentation of Labour Migration-Related Abuses in Support of Access to Justice

This companion handbook is designed for civil society organizations, frontline responders, paralegals, and community actors involved in documenting abuses and supporting accountability processes. It provides practical guidance on survivor-centered documentation methodologies, evidence preservation, ethical standards, and documentation practices capable of supporting access to remedy. By strengthening documentation practices and the preservation of relevant evidence, the handbook also supports broader access to justice efforts and enhances the ability of migrant workers and their advocates to pursue remedy.

2. Simplified Brochure on Available Remedies for Migrant Workers

This simplified resource is intended directly for migrant workers, returnees, families, and communities. It presents key rights, essential pre-departure information, and available avenues for protection, assistance, and remedy in a more accessible and user-friendly format aimed at strengthening rights awareness and facilitating referrals to appropriate support and accountability mechanisms.

Introduction

Labour Migration, Economic Pressures, and Expanding Risks in Africa

Across Africa, labour migration has become both a household survival strategy and an increasingly institutionalized economic policy. This trend is particularly visible in Kenya, where overseas employment has assumed growing economic importance and increasing numbers of workers migrate each year in search of employment opportunities abroad. Persistently high levels of unemployment, economic insecurity, inequality, and limited access to decent work continue to drive millions of people across the continent to seek employment opportunities beyond their countries of origin.

In 2024, around 25 million Africans were living in another African country, while 21 million Africans were living outside Africa[2]. Although more recent consolidated continental statistics remain limited, migration flows from and within the continent have continued to expand in subsequent years. Many African governments have increasingly embraced labour export as a development strategy aimed at reducing unemployment, increasing remittance inflows, and supporting national economic stability.

Remittances now constitute a significant source of income for many households and an important contribution to national economies across the continent. In 2022, total remittances flowing to the continent stood at US$97.4 billion or 3.3 percent of GDP, against US$62 billion (2 percent of GDP) for official development assistance and US$50 billion(1.7 percent of GDP) for foreign direct investment[3]. Moreover, these flows are likely to be underreported as they do not capture transfers through informal channels, which could represent a significant additional share of the recorded flows.

While labour migration can generate significant economic opportunities for workers, families, and national economies, many migrant workers nevertheless encounter deception, exploitation, violence, and serious violations of their rights throughout the migration cycle. Across migration corridors toward the Gulf and Arab States, parts of Asia, and other destinations, migrant workers have reported widespread patterns of wage theft, passport confiscation, confinement, excessive working hours, denial of medical care, physical and sexual abuse, debt bondage, abandonment, and deaths in unexplained circumstances.

Recent years have also demonstrated how rapidly exploitative migration schemes evolve across regions and sectors, from long-standing patterns of abuse affecting African migrant workers in the Gulf and Arab States under kafala and other sponsorship-based systems, to emerging forms of

[2] McAuliffe, M. and P. Ceriani Cernadas (eds.), 2026. World Migration Report 2026. International Organization for Migration (IOM), Geneva, 43-50.
[3] A Okara, M Boly, A Simpasa and C Chuku, *Unlocking Africa's Potential: Making Remittances Work for Development* (Working Paper Series No 386, African Development Bank 2025).

transnational exploitation. Thousands of African migrant workers have been recruited into scam compounds in Myanmar, Cambodia, and Laos through fraudulent employment offers and subsequently forced to engage in cybercrime operations under threats of violence, torture, and extortion. Others have reportedly been deceived into recruitment schemes linked to armed conflict zones through promises of high-paying civilian employment.

These realities underscore the need not only for stronger prevention and protection measures, but also for effective accountability mechanisms capable of providing remedies to victims and deterring future abuses.

Where access to justice mechanisms are inadequately implemented, inaccessible in practice, or unable to deliver effective and enforceable remedies,, exploitation becomes normalized, abusive actors continue to operate with relative impunity, and migrant workers are too often denied access to safe and dignified work while being left to bear alone the devastating physical, psychological, social, and economic consequences of abuse.

Operationalizing access to remedy is therefore not only essential to restore dignity, rights, and redress to survivors, but also to deter future abuse, strengthen the rule of law, promote fair and decent labour migration systems, and increase the legal, financial, and reputational costs for those who profit from deception, exploitation, trafficking, and forced labour.

The Convergence Between Labour Migration and Human Trafficking

While labour migration and human trafficking are distinct concepts, patterns of abuse arising within labour migration processes may, in certain circumstances, amount to trafficking in persons, forced labour, or other serious human rights violations, particularly where deception, coercion, abuse of vulnerability, or exploitation are involved.

Many cases of exploitation begin within seemingly lawful recruitment systems: workers sign contracts, obtain visas, and travel through registered agencies. However, abuses may arise at multiple stages of the migration process, including through deception, fraudulent promises, inflated recruitment fees, contract substitution, restrictions on movement, inadequate pre-departure information, abuse of vulnerability, or failures by recruiters and intermediaries to respond appropriately to workers in distress. In certain circumstances, these practices may contribute to situations amounting to trafficking in persons, forced labour, or related forms of exploitation.

While not every labour migration-related abuse constitutes trafficking in persons, identifying situations that meet the legal threshold for trafficking is important because such classification may trigger additional protections, investigative obligations, victim assistance measures, and avenues for accountability and remedy under national and international law.

Women migrant domestic workers are disproportionately affected by these abuses. The feminization of migration has resulted in increasing numbers of African women migrating for domestic work in Gulf countries and other destinations, often within highly isolated environments

where labour protections are weak or excluded entirely. Their concentration within private households, combined with unequal power dynamics, immigration dependency, gender discrimination, and limited freedom of movement, significantly heightens their exposure to abuse and reduces their ability to seek assistance or escape exploitative conditions.

Although many countries in Africa have adopted important legal and regulatory frameworks governing labour migration, trafficking in persons, employment relationships, and the conduct of recruitment agencies, access to justice and effective remedy for migrant workers remains limited in practice. Survivors frequently encounter barriers including high litigation costs, limited legal awareness, fear of retaliation or blacklisting, fragmented institutional coordination, evidentiary challenges, and restricted access to specialized legal assistance.

In addition, many existing legal and regulatory mechanisms remain underutilized due to limited awareness among justice actors and insufficient understanding of how labour, trafficking, contractual, and administrative frameworks may be applied in the context of labour migration-related abuses.

Access to Justice and the Meaning of Remedy in the context of Labour Migration

Access to justice within the context of labour migration concerns the ability of migrant workers to effectively claim, exercise, and enforce their rights through accessible, fair, and non-discriminatory mechanisms capable of providing effective protection and remedy.

Access to justice extends far beyond the mere existence of complaint mechanisms. Consistent with international human rights standards, including the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, effective access to justice requires that victims are able to access information, protection, participation, and effective remedies through fair, accessible, and impartial mechanisms[4].

First, migrant workers must know and understand their rights, recognize when violations have occurred, and be aware of the avenues available to seek assistance and redress. Access to information is therefore a foundational component of justice[5].

Second, justice mechanisms must be genuinely accessible in practice. Migrant workers must be able to navigate procedures physically, financially, linguistically, and institutionally, including

[4] UNGA Res 60/147 (16 December 2005) UN Doc A/RES/60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.

[5] International Labour Organization, *Key Findings from an Assessment of the Kenyan Legal Framework for Access to Complaints and Remedy Procedures by Migrant Workers* (ILO Policy Brief, 8 July 2025).

through access to legal aid, interpreters, trade unions, and other forms of support capable of enabling meaningful participation in justice processes[6]. This also requires measures aimed at minimizing barriers to participation, protecting victims from retaliation or intimidation, and ensuring meaningful access to institutions capable of addressing violations effectively and safely.

Third, justice mechanisms must be capable of delivering remedies that are effective, appropriate, and timely. Therefore, this Roadmap adopts a broad and survivor-centered understanding of the concept of "remedy," consistent with international standards recognizing that remedies may include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Remedy is therefore not limited to court judgments, but encompasses the full range of measures capable of restoring rights, dignity, accountability, and protection against future harm.

This includes judicial remedies, such as civil litigation, criminal accountability, labour claims, compensation, restitution, and enforcement of contractual and statutory obligations, but also non-judicial remedies, including administrative sanctions, labour dispute resolution mechanisms, mediation, legal aid, psychosocial support, referral systems, survivor assistance measures, public acknowledgment of harm, institutional reforms, and broader advocacy efforts aimed at preventing future abuse and strengthening protection systems.

The Roadmap therefore seeks to provide a comprehensive overview of the pathways through which migrant workers may access justice and obtain effective remedy. The absence of meaningful accountability not only harms migrant workers and their families, but also undermines ethical recruitment, weakens labour migration governance, and enables abusive practices to persist with limited legal consequence.

Effective remedies are therefore essential not only for individual justice, but also for promoting fair and dignified work, strengthening labour migration governance, and reinforcing the rule of law.

Bridging Transnational Labour Migration-Related Abuses and Domestic Accountability in Kenya

The transnational nature of labour migration creates profound challenges for access to justice. Violations often occur across multiple jurisdictions involving recruiters, agencies, employers, brokers, and state actors operating in different countries. Migrant workers frequently encounter severe barriers when attempting to seek remedies abroad, including restrictive legal systems, fear of retaliation, immigration-related vulnerabilities, language barriers, limited consular support, financial constraints, and difficulties enforcing judgments transnationally.

Against this background, Global Justice Kenya's work with returnee migrant workers and survivors of trafficking has demonstrated that, in many cases, the most realistic and accessible

[6] ibid.

opportunities for accountability are found within the country of origin itself. Through documentation efforts, legal accompaniment, repatriation work, survivor engagement, and the identification of available legal pathways, Global Justice Kenya has observed that many forms of exploitation can and should be addressed through Kenyan legal and institutional mechanisms, particularly where abusive conduct originates during recruitment and deployment processes in Kenya.

This is particularly significant because many abuses originate at the recruitment stage. Deceptive promises, unlawful fees, fraudulent contracts, misinformation, inadequate pre-departure information, negligent responses to workers in distress, and failures to conduct proper due diligence frequently establish the conditions that later facilitate exploitation abroad. Addressing accountability at the recruitment stage is therefore essential both for ensuring remedy and for preventing future harm.

As the country of origin, Kenya remains the jurisdiction where migrant workers generally retain the strongest practical, linguistic, institutional, and social access to justice. National courts and institutions are often better positioned to exercise direct enforcement powers over recruitment agencies, brokers, contractual obligations, and administrative actors operating within Kenyan territory. While transnational accountability remains important, enforcement against locally based recruitment structures is frequently more feasible than pursuing complex litigation abroad against foreign employers or entities beyond the effective reach of Kenyan workers.

Kenyan law already provides several important, though often underutilized, frameworks for accountability and remedy, including labour protections, anti-trafficking legislation, contractual liability mechanisms, administrative oversight procedures, and state-based victim protection systems. However, many of these mechanisms remain difficult to access or insufficiently operationalized due to limited awareness of their applicability to labour migration-related abuses, financial barriers, evidentiary challenges, and restricted access to specialized legal assistance.

This Roadmap therefore seeks to clarify and operationalize the pathways through which migrant workers may pursue accountability and obtain effective remedy within Kenya.

At the same time, labour migration-related abuses and barriers to remedy are not unique to Kenya but affect migrant workers across the African continent and beyond. Similar efforts aimed at mapping, clarifying, and operationalizing domestic avenues for accountability and access to justice within national legal systems could provide significant value in other countries of origin facing comparable migration and protection challenges.

However, because remedies and accountability mechanisms are necessarily grounded in specific national legal and institutional frameworks, the development of equivalent instruments for other jurisdictions would require separate country-specific analysis and should properly constitute the subject of distinct national roadmaps or manuals.

This Roadmap does not seek to provide an exhaustive analysis of every legal issue that may arise in labour migration-related cases. Rather, it aims to identify and operationalize the principal pathways through which migrant workers may obtain protection, accountability, and effective remedies within the Kenyan context, while highlighting relevant regional and international mechanisms where appropriate. It is intended as a practical resource for migrant workers, legal practitioners, civil society organizations, labour institutions, policymakers, and other actors working to strengthen access to justice and remedy in the context of labour migration.

Chapter 1: Labour Migration in Kenya: Trends, Violations, and Governance Framework

This chapter provides an overview of labour migration in Kenya and introduces the broader legal and institutional context within which migrant workers seek protection and access to remedies. Understanding the migration landscape, the nature of labour migration-related abuses, and the institutions responsible for regulating labour migration is essential for identifying the appropriate pathways to protection, accountability, and remedy examined throughout the remainder of this Legal Roadmap.

The chapter begins by examining the main labour migration trends shaping Kenya's migration landscape, including the increasing reliance on overseas employment, the principal destination corridors for Kenyan migrant workers, and emerging migration patterns associated with new forms of exploitation and abuse.

It then analyses the main patterns of violations experienced by Kenyan migrant workers across the migration cycle, with particular attention to structural vulnerabilities affecting women migrant domestic workers and other low-wage migrant workers.

Subsequently, this section examines how labour migration is regulated in Kenya, focusing primarily on the domestic legal and institutional framework governing labour migration, recruitment, worker protection, anti-trafficking measures, and access to justice.

Particular attention is given to the mandates and roles of state institutions involved in labour migration governance and migrant worker protection, as these mechanisms constitute the primary focus of this Legal Roadmap.

Although this Roadmap focuses primarily on domestic legal and institutional mechanisms, it is important to recognize that Kenya's legal framework governing labour migration is informed not only by domestic legislation but also by international and regional legal obligations. Pursuant to the Constitution of Kenya, general rules of international law and treaties ratified by Kenya form part of the law of Kenya. Accordingly, international labour standards, human rights instruments, anti-trafficking treaties, and relevant regional frameworks may assist in interpreting domestic legal obligations, identifying applicable rights, and shaping approaches to protection, accountability, and remedy for migrant workers.

While relevant international and regional instruments, as well as bilateral labour agreements, are briefly referenced where necessary, they are not examined in detail, as cross-border accountability mechanisms and international legal frameworks fall within the scope of a separate publication specifically dedicated to transnational access to justice and cross-border remedies for migrant workers.

1.1 Labour Migration Trends in Kenya

Labour migration has become an increasingly significant socio-economic phenomenon in Kenya, driven by persistent unemployment, underemployment, widening economic inequalities, demographic pressure, and the growing normalization of overseas employment as a household survival strategy.

Kenya's youth unemployment crisis remains particularly acute, with estimates suggesting that between 43% and 67% of young people are either unemployed or underemployed[7]. In response, the Kenyan government has progressively embraced labour export as part of its economic and employment policy, positioning overseas employment as a strategy to reduce domestic unemployment and increase foreign remittance inflows. Under the current administration's labour export agenda, including the *Kazi Majuu* initiative, the government has significantly expanded bilateral labour agreements and overseas deployment programmes.[8] Recent government statements indicate that more than 494,000 young Kenyans have secured foreign employment opportunities through official bilateral labour arrangements and overseas recruitment initiatives[9].

Although precise and updated statistics remain difficult to verify due to irregular migration channels and fragmented reporting systems, estimates suggest that at least 4 million Kenyans are currently living and working abroad, with labour migration continuing to grow rapidly[10]. The Gulf Cooperation Council (GCC) countries and other Arab States remain the primary destination corridor for Kenyan migrant workers, particularly women employed in domestic work, caregiving, hospitality, security, and other low-wage service sectors. By mid-2024, reports estimated that more than 416,000 Kenyans were working in GCC countries alone, including over 312,000 in Saudi Arabia, which remains the single largest destination country for Kenyan labour migrants[11].

Labour migration statistics should be interpreted cautiously. Significant numbers of migrant workers travel through informal or irregular channels, while reporting methodologies differ across institutions and over time. Consequently, available estimates may vary considerably depending on

[7] Afrobarometer, 'Most Kenyan Youth See Government as Failing on Their Top Priorities' <https://www.afrobarometer.org/publication/ad988-most-kenyan-youth-see-government-as-failing-on-their-top-priorities/ > accessed 20 May 2026.
[8] Marigu S and Elmawi O, "KAZI MAJUU" (*Global Justice Group*, July 31, 2023) <https://www.globaljusticegroup.org/kazi-majuu > accessed 20 May 2026.
[9] The Star, 'Ruto: Over 494k Youths Working Abroad' <https://www.the-star.co.ke/news/2026-04-29-ruto-over-494k-youths-working-abroad> accessed 20 May 2026.
[10] Business Daily Africa, 'Kenyans in Diaspora Are Key to Economic Growth Agenda' <https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/kenyans-in-diaspora-are-key-to-economic-growth-agenda-5286728> accessed 20 May 2026.
[11] Mwakilishi, 'Money Isn't Everything: Kenyan Workers in Gulf Countries Speak Out' <https://www.mwakilishi.com/article/diaspora-news/2025-08-13/money-isnt-everything-kenyan-workers-in-gulf-countries-speak-out > accessed 20 May 2026.

the source consulted. Nevertheless, existing data consistently indicate that labour migration has become a major social, economic, and policy phenomenon in Kenya.

While migration toward the Gulf and Arab States remains the dominant labour migration trend, recent years have also witnessed the emergence of new and increasingly concerning migration patterns linked to conflict zones, transnational organized crime, and cyber-enabled exploitation.

In 2026, the Kenyan Parliament received a report from the National Intelligence Service (NIS) indicating that approximately 1,000 Kenyans had reportedly been recruited into the Russia–Ukraine conflict through deceptive overseas employment schemes.[12] According to the report, victims were allegedly promised job opportunities abroad by rogue recruitment agents, only to later find themselves deployed to support Russian military operations.[13]

Southeast Asia has also emerged as a growing destination linked to trafficking for forced criminality. As of May 2026, official reports indicated that hundreds of Kenyans had been trafficked to Myanmar and Cambodia and coerced into participating in online scam operations under exploitative and violent conditions. [14]Reports further indicated that many victims remained trapped in scam compounds, detention facilities, or territories controlled by armed groups, while others had been repatriated following rescue operations. [15]

These developments reflect the increasing diversification of Kenyan labour migration routes and the growing exposure of Kenyan migrants to sophisticated forms of abuses, including trafficking, exploitation, forced criminality, and other severe human rights violations.

1.2 Main Patterns of Violations in the Labour Migration Context

The abuses experienced by Kenyan migrant workers are neither uniform nor limited to labour rights violations alone. Rather, labour migration-related abuse frequently involves a wide spectrum of interconnected human rights violations, criminal conduct, and protection concerns arising at different stages of the migration cycle, including recruitment, transit, employment, detention, repatriation, and reintegration. Depending on the factual circumstances of each case, migrant workers may be exposed to one or more of the violations, abuses, and exploitative practices identified in the text box below. These harms often overlap and may give rise to multiple protection needs, legal claims, and pathways to remedies.

---

[12] Africanews, 'Russia Has Taken "Over 1,000" Kenyans to Ukraine: Intelligence Report' (2 April 2026) <https://www.africanews.com/2026/02/19/russia-has-taken-over-1000-kenyans-to-ukraine-intelligence-report/ > accessed 20 May 2026.

[13] ibid

[14] A Mutambo, 'How Myanmar Became Destination for Trafficked East Africans' The EastAfrican (16 November 2022) <https://www.theeastafrican.co.ke/tea/news/east-africa/myanmar-new-trafficking-destination-for-e-africans-4022364> accessed 20 May 2026.

[15] ibid

For legal practitioners, it is important to recognise that labour migration-related abuses often give rise to multiple and overlapping forms of liability. Depending on the factual circumstances of the case, the same conduct may engage several of the legal frameworks and pathways to remedies listed in the text box below.

OVERLAPPING LEGAL FRAMEWORKS AND FORMS OF LIABILITY

- Labour and employment law protections
- Criminal liability
- Anti-trafficking legislation
- Constitutional protections and constitutional petitions
- Immigration and administrative law proceedings
- Civil liability and compensation claims
- International and regional human rights protections and accountability mechanisms

In many instances, these abuses may also amount to violations of internationally protected rights, including the prohibition of slavery, forced labour, torture, arbitrary detention, discrimination, and gender-based violence, under instruments such as the Universal Declaration of Human Rights, the ILO Forced Labour Convention, 1930 (No. 29), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Covenant on Civil and Political Rights, among other applicable international and regional human rights frameworks.

Kenyan women migrant workers, particularly those employed in domestic work, continue to face widespread and systematic abuses throughout the migration cycle. As highlighted in the previous section on labour migration trends, reports from survivors, civil society organizations, media investigations, and international organizations have consistently documented patterns of deception by recruitment agencies, recruitment through unlicensed entities and informal brokers, excessive recruitment fees, contract substitution, confiscation of identity documents, isolation within employers' homes, physical violence, and sexual abuse.

In recent years, online job scams and fraudulent overseas employment advertisements disseminated through social media platforms and informal recruitment networks have also increasingly exposed Kenyan jobseekers to trafficking in persons, forced criminality, and other forms of exploitation. Many abused migrant workers additionally face significant barriers in accessing complaint mechanisms, legal representation, consular assistance, shelters, or effective remedies in destination countries.

Particularly alarming are the increasing reports of deaths occurring under unclear or suspicious circumstances among Kenyan migrant workers abroad, especially women employed as domestic workers in Saudi Arabia. According to recent reports, at least 274 Kenyan workers, the majority

of them women, died in Saudi Arabia between 2020 and 2025, including at least 55 deaths recorded in 2024 alone. [16]Several reported cases involved allegations of physical abuse, unexplained injuries, burns, electric shocks, or contradictory autopsy findings, raising serious concerns regarding accountability, access to investigations, and the protection of migrant workers' right to life and dignity.[17]

Emerging migration routes, including those discussed in the previous section concerning Myanmar, Cambodia, and recruitment linked to the Russia–Ukraine conflict, further demonstrate how labour migration-related abuses increasingly intersect with trafficking in persons, transnational organized crime, cyber-enabled exploitation, forced criminality, and conflict-related exploitation.

From an access-to-justice perspective, the legal characterization of labour migration-related abuses is often a critical strategic consideration. The manner in which a case is framed may directly affect the procedural, substantive, and institutional factors identified in the text box below.

Understanding the multidimensional nature of these abuses is therefore essential for lawyers, judges, investigators, and frontline practitioners seeking to identify appropriate legal strategies and effective pathways toward accountability and remedy. While labour migration-related abuses may also engage international and regional accountability mechanisms, this Legal Roadmap primarily focuses on the domestic legal and institutional framework available in Kenya to pursue protection, accountability, and remedies for migrant workers and survivors of abuse. International and regional mechanisms, as well as broader transnational advocacy pathways, are referenced where relevant and are further addressed in the advocacy-focused sections of this publication.

PRACTICAL IMPLICATIONS OF LEGAL CHARACTERIZATION

- The available avenues for remedy
- Jurisdictional considerations
- Applicable legal frameworks
- Evidentiary requirements
- Available forms of reparation
- Survivor protection measures
- The institutions competent to investigate or adjudicate the case

[16] M Staff, 'At Least 274 Kenyan Workers Dead in Saudi Arabia over Past Five Years' Middle East Eye (17 March 2025) <https://www.middleeasteye.net/news/least-274-kenyan-workers-dead-saudi-arabia-over-past-five-years> accessed 20 May 2026.

[17] ibid.

1.3 International and Regional Legal Framework

Kenya's labour migration governance framework operates within a broader system of international and regional legal obligations that inform the protection of migrant workers and guide the interpretation and application of domestic law. Through the ratification of international human rights, labour, migration, anti-trafficking, and regional instruments, Kenya has undertaken commitments relating to the protection of migrant workers, prevention of trafficking in persons and forced labour, promotion of equality and non-discrimination, and access to justice and effective remedies.

Pursuant to Articles 2(5) and 2(6) of the Constitution of Kenya, general rules of international law and treaties ratified by Kenya form part of the law of Kenya. Accordingly, these instruments may assist courts, practitioners, policymakers, and institutions in interpreting domestic legislation, identifying applicable rights and obligations, addressing legislative gaps, and developing appropriate remedies for migrant workers and survivors of abuse.

The principal international and regional instruments relevant to labour migration governance, protection of migrant workers, and access to remedies are summarized in the table below. Together, these instruments establish a complementary framework of rights, protections, and accountability mechanisms that may inform the interpretation of domestic law and support efforts to secure protection, accountability, and remedies for migrant workers.

KEY INTERNATIONAL AND REGIONAL LEGAL FRAMEWORKS RELEVANT TO KENYAN MIGRANT WORKERS		
Framework Category	**Key Instruments**	**Principal Rights and Protections**
Migration & Trafficking	ICRMW; Palermo Protocol	Protection throughout the migration cycle; trafficking prevention; victim protection; access to justice
Labour Rights	ILO Conventions Nos. 29 & 105; ICESCR	Prohibition of forced labour; fair working conditions; wages; social security
Human Rights & Access to Justice	ICCPR; African Charter	Freedom from slavery, torture, arbitrary detention; equality; effective remedies
Women Migrant Workers	CEDAW; Maputo Protocol	Gender equality; protection from violence; reproductive rights; access to justice

KEY INTERNATIONAL AND REGIONAL LEGAL FRAMEWORKS RELEVANT TO KENYAN MIGRANT WORKERS		
Framework Category	**Key Instruments**	**Principal Rights and Protections**
Children & Families	CRC; African Charter on the Rights and Welfare of the Child	Family unity; birth registration; nationality; best interests of the child
Regional Labour Mobility	EAC Common Market Protocol	Free movement of workers; labour mobility; equal treatment

These international and regional instruments provide the broader normative framework within which Kenya's labour migration governance system operates. The following section therefore examines the domestic constitutional, legislative, regulatory, and institutional framework through which these commitments are implemented and enforced within Kenya.

Bilateral Labour Agreements

In addition to the multilateral instruments outlined above, Kenya has entered into a number of Bilateral Labour Agreements (BLAs) with destination countries. BLAs constitute an increasingly important component of labour migration governance and establish binding commitments between participating States concerning the recruitment, deployment, protection, and return of migrant workers. Depending on their terms, BLAs may address matters such as employment conditions, dispute resolution, information sharing, consular cooperation, repatriation, labour inspection, and mechanisms for the protection of migrant workers in destination countries.

International guidance developed by the ILO and the United Nations Network on Migration encourages States to adopt rights-based Bilateral Labour Agreements that promote decent work, protect migrant workers throughout the migration cycle, and strengthen access to justice and remedies. Key principles and good practices are summarized in the text box below.[18]

[18] International Labour Organization (ILO) and United Nations Network on Migration, *Guidance on Bilateral Labour Migration Agreements and Memoranda of Understanding*, February 2022.

Protection of Human and Labour Rights

- Equality of treatment between migrant workers and nationals with respect to wages, working conditions, occupational safety and health, and access to remedies;
- Explicit prohibition of passport confiscation and other practices restricting workers' freedom of movement;
- Protection against forced labour, trafficking in persons, violence, discrimination, and exploitation;
- Gender-responsive safeguards addressing the particular vulnerabilities of women migrant workers, including domestic and care workers.

Fair and Ethical Recruitment

- Application of the employer-pays principle to prevent workers from bearing recruitment fees and related costs;
- Regulation, monitoring, and accountability of recruitment agencies and intermediaries;
- Provision of clear written employment contracts in a language understood by the worker prior to departure.

Institutional Cooperation and Access to Justice

- Establishment of joint implementation and monitoring mechanisms between origin and destination countries;
- Meaningful participation of trade unions, employers' organisations, and other social partners in the development and implementation of BLAs;
- Accessible complaint mechanisms, dispute resolution procedures, legal assistance, and referral pathways for migrant workers.

Portability of Rights and Benefits

- Mechanisms facilitating the portability of social security benefits, pensions, and other employment-related entitlements;
- Recognition of qualifications, skills, and professional experience acquired across

While BLAs do not generally create directly enforceable rights for individuals in the same manner as domestic legislation, they may assist in clarifying State responsibilities, facilitating cross-border cooperation, supporting advocacy efforts, and strengthening accountability in cases involving migrant worker abuses. They may also provide important institutional mechanisms for addressing labour disputes and protection concerns arising in destination countries.

At the time of publication, Kenya is engaged in the negotiation, review, and revision of several Bilateral Labour Agreements with key destination countries. Given the evolving nature of these negotiations and the fact that some agreements have not yet been formally concluded or made publicly available, this Roadmap does not provide a detailed analysis of individual BLAs. Once signed and placed in the public domain, relevant agreements may be incorporated as an annex to future editions of this Roadmap.

1.4 Legal Framework Governing Labour Migration in Kenya

Consistent with the international and regional commitments outlined above, Kenya's labour migration governance framework is regulated through a combination of constitutional provisions, labour legislation, anti-trafficking laws, employment regulations, administrative procedures, and policy instruments aimed at regulating overseas recruitment, protecting migrant workers, and preventing exploitation. Given the wide spectrum of abuses discussed in the previous sections, the legal characterization of a violation is particularly significant, as it directly shapes the applicable legal framework, the competent institutions, and the remedies that may become available to migrant workers and survivors of abuse. Accordingly, understanding how these legal frameworks interact is essential for identifying appropriate pathways to protection, accountability, and remedy.

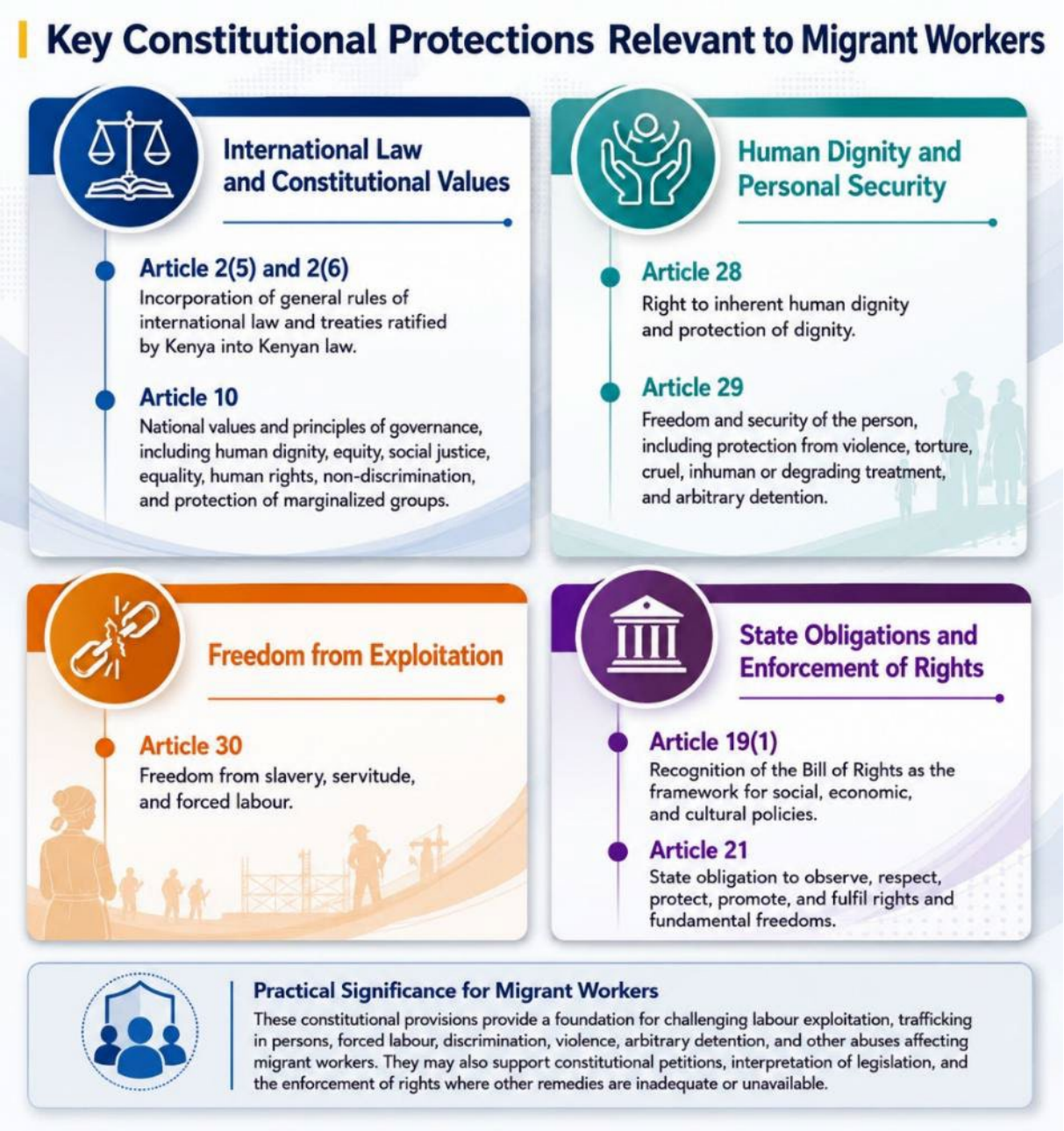
This section focuses primarily on the domestic legal framework applicable to Kenyan migrant workers travelling abroad for employment and introduces the principal legal instruments that may be invoked in response to labour migration-related abuses. While Kenyan law and policy also address the protection and regulation of migrant workers immigrating into Kenya, that dimension falls outside the scope of this publication, which is specifically concerned with outbound labour migration and the protection of Kenyan nationals deployed abroad for work.

The section therefore examines the principal constitutional provisions, national laws, regulatory safeguards, and policy instruments governing labour migration in Kenya, particularly those relevant to recruitment practices, deployment procedures, migrant worker protection, trafficking in persons, and institutional oversight. International and regional frameworks remain fundamental sources of law and interpretation within the Kenyan legal system; however, the primary focus of this Legal Roadmap is the domestic legal framework, institutions, and procedures that practitioners may directly invoke when responding to labour migration-related abuses and seeking accountability and remedies for survivors. Issues relating to specific causes of action and available remedies under constitutional, criminal, labour, or civil proceedings are addressed in subsequent sections of this publication.

1.4.1 Constitution of Kenya, 2010[19]

The Constitution of Kenya, 2010 provides the overarching legal and human rights framework governing labour rights, access to justice, state obligations, and protection of fundamental rights relevant to labour migration and migrant worker protection. It also serves as the principal mechanism through which Kenya's international and regional legal commitments are integrated into and applied within the domestic legal system. Although the Constitution does not specifically regulate labour migration, several constitutional provisions are directly relevant to situations involving abusive recruitment, trafficking in persons, forced labour, exploitation, violence, arbitrary detention, discrimination, and denial of remedies.

[19] Constitution of Kenya, 2010.



These constitutional protections provide the broader normative framework within which labour migration-related abuses are assessed under Kenyan law and through which Kenya's international and regional obligations are interpreted and applied. They are particularly relevant in situations involving trafficking in persons, forced labour, violence, passport confiscation, arbitrary confinement, exploitative recruitment practices, discriminatory treatment, and deaths occurring under suspicious circumstances. They may also provide independent causes of action through constitutional petitions where violations of fundamental rights and freedoms can be established.

1.4.2 Labour Institutions Act, 2007

The Labour Institutions Act, 2007 ("LIA") establishes labour institutions and regulates their functions, powers, duties, and related matters.[20] Recruitment agencies engaged in overseas labour placement are deemed to be "labour institutions" under the Act and are therefore subject to registration and regulatory oversight requirements.

Under LIA, recruitment agencies facilitating overseas employment must:[21]

- Be registered by the National Employment Authority ("NEA"); and
- Be licensed to operate lawfully in Kenya. Registration constitutes a prerequisite for carrying out business as a recruitment or employment agency involved in labour migration and overseas placement operations.

Recruitment agencies operating under the Act are additionally required to:

- Retain operational records for at least three years;
- Maintain updated records of workers deployed abroad;
- Produce records for inspection upon request by employment officers; and
- Furnish statistical information as required by competent authorities.

Failure to comply with these obligations may constitute a criminal offence punishable by:[22]

- A fine not exceeding KES 50,000;
- Imprisonment for a term not exceeding three months; or
- Both.

The regulatory framework established under the LIA is particularly relevant in cases involving recruitment through unlicensed entities, informal brokers, fraudulent intermediaries, travel agents or irregular recruitment structures, which remain common features of abusive labour migration schemes affecting Kenyan workers abroad.

The figure below highlights key compliance obligations, common red flags of irregular recruitment practices, and their potential relevance to investigations, accountability efforts, and access to remedies for migrant workers.

[20] Labour Institutions Act 2007.
[21] ibid, s 55.
[22] ibid, s 59.



1.4.3 Employment Act, 2007

The Employment Act, 2007 ("EA") constitutes Kenya's primary legislation governing employer–employee relations.[23] The Act defines key concepts such as employer, employee, and contract of service, while establishing the legal framework governing employment conditions and protections against exploitative labour practices, including forced labour.

The EA applies broadly to all employment relationships established through a contract of service, whether oral or written, express or implied. Of particular relevance to labour migration are Sections 83 to 86 of the Act, which specifically regulate foreign contracts of service, namely contracts under which Kenyan workers are employed outside Kenya.[24]

Under Sections 83–86 of the EA, recruitment agencies facilitating overseas employment are required to ensure that migrant workers enter into valid foreign contracts of service prior to departure. Failure to comply with these requirements may constitute a criminal offence attracting fines and/or imprisonment.

[23] Employment Act 2007.
[24] ibid, s 83-86.

Form and Attestation of Foreign Contracts of Service

Under Section 84 of the EA, a foreign contract of service must:[25]

- Be in the prescribed written form;
- Be signed by the parties; and
- Be attested by a Labour Officer before departure.

Attestation functions as a statutory safeguard intended to verify the legality and fairness of the recruitment process before a worker departs Kenya for employment abroad.

CONDITIONS FOR ATTESTATION OF A FOREIGN CONTRACT OF SERVICE

- The employee has freely consented to the contract;
- There is no fraud, coercion, undue influence, mistake of fact, or misrepresentation;
- The contract complies with the prescribed legal form;
- The terms comply with the Employment Act;
- The employee understands the contractual terms;
- The employee is medically fit; and
- The employee is not already bound by another contract of service.

These safeguards are particularly relevant in cases involving deceptive recruitment, contract substitution, coercive deployment, or fraudulent overseas employment schemes.

In practice, foreign contracts of service are commonly concluded between the migrant worker, as the employee, and the Kenyan recruitment agency or local recruitment agent, as the employer or authorized agent. As a result, the recruitment agency frequently assumes responsibilities extending beyond mere placement functions and may exercise significant control over the recruitment, deployment, and management of the worker throughout the duration of employment abroad.

⚠ This contractual arrangement establishes an employer–employee or principal-agent relationship giving rise to duties of care and corresponding legal obligations on the part of the recruiter or recruitment agency for the duration of the foreign deployment. The legal implications arising from this relationship, including potential labour, civil, constitutional, and tort-based liability, are examined in subsequent sections of this Legal Roadmap.

[25] n27, s 84.

Security Bond Requirement

Under Section 85 of the EA, where a foreign employer does not reside in Kenya, a security bond must be provided with one or more sureties resident in Kenya to guarantee due performance of the contract.[26]

Where a recruitment agency acts as an authorized local agent:

- The agency must provide the bond;
- The agency remains personally bound by the bond; and
- The responsible Labour Officer must approve the bond and determine its amount.

The security bond mechanism is intended to strengthen accountability of local recruitment actors and provide an additional safeguard against exploitation and contractual non-performance.

The principal safeguards established under Sections 83–86 of the Employment Act relating to overseas employment are summarized in the figure below.

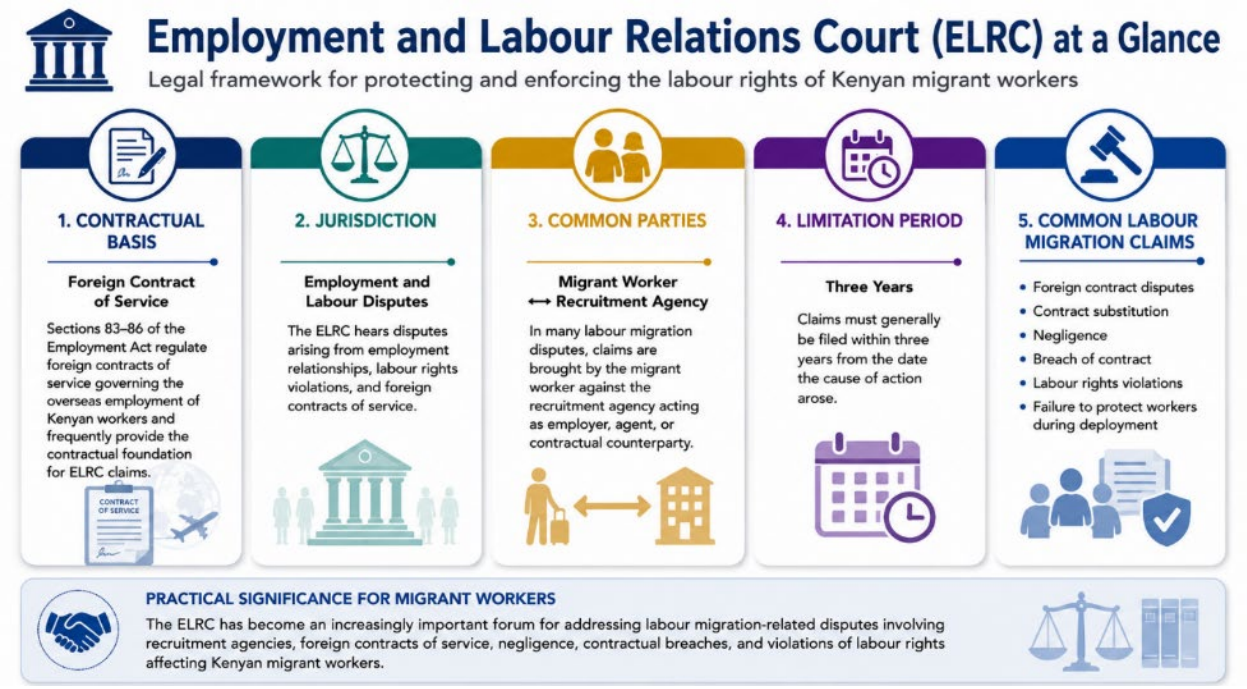


[26] n27, s 85.

1.4.4 The Employment and Labour Relations Court Act[27]

The Employment and Labour Relations Court Act, 2011 establishes the legal framework for the Employment and Labour Relations Court (ELRC), a superior court in Kenya mandated to hear and determine disputes relating to employment and labour relations. In the context of labour migration, the ELRC plays a critical role in protecting and enforcing the labour rights of Kenyan migrant workers, particularly in cases involving foreign contracts of service and violations of statutory and constitutional rights.

Through its jurisdiction, the ELRC contributes to accountability within the labour migration system and promotes access to justice for migrant workers.



Claims filed before the ELRC must be instituted within three years from the date the cause of action arose. In most labour migration related disputes, the parties to the suit are typically the employee, being the migrant worker, and the employer, the recruitment agency. Understanding the jurisdiction, timelines, and parties involved in ELRC proceedings is essential for practitioners and migrant workers seeking to effectively pursue labour rights violations and access appropriate remedies. As discussed in subsequent chapters, the ELRC has become an increasingly important forum for addressing labour migration-related disputes involving recruitment agencies, foreign contracts of service, negligence, contractual breaches, and labour rights violations affecting Kenyan migrant workers.

[27] Employment and Labour Relations Court Act 2011.

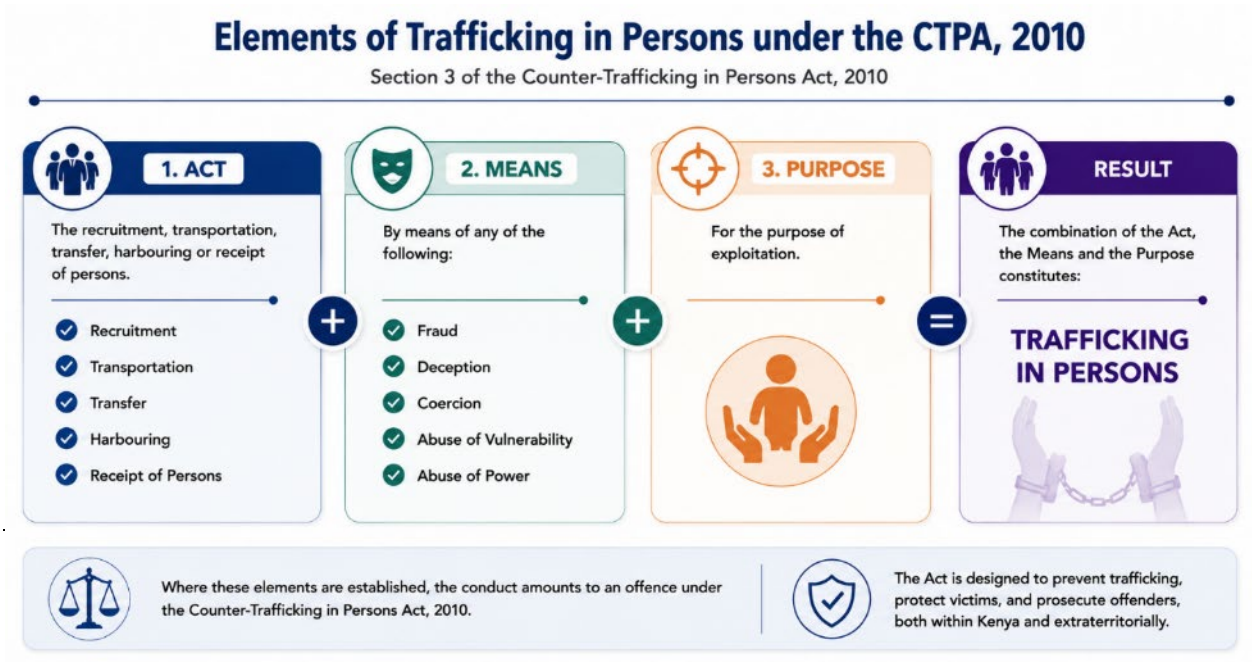
1.4.5 Counter-Trafficking in Persons Act, 2010

The Counter-Trafficking in Persons Act, 2010 ("CTPA") constitutes one of the principal legal frameworks applicable to labour migration-related exploitation and trafficking in persons in Kenya.[28] The Act implements Kenya's obligations under the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("Palermo Protocol").

SITUATIONS IN WHICH THE CTPA MAY APPLY

- Deceptive recruitment;
- Fraudulent overseas job offers;
- Exploitation through coercion or abuse of vulnerability;
- Forced labour;
- Forced criminality;
- Confiscation of travel documents;
- Recruitment linked to organized criminal networks; and
- Exploitative recruitment agency practices.

Section 3 of the Act defines trafficking in persons broadly to include recruitment, transportation, transfer, harbouring, or receipt of persons for purposes of exploitation through means including fraud, deception, coercion, abuse of vulnerability, or abuse of power. [29] For practitioners, the trafficking analysis often begins with an assessment of whether the factual circumstances satisfy the constituent elements of trafficking in persons.



[28] Counter-Trafficking in Persons Act 2010.
[29] ibid, s 3.

TRAFFICKING-RELATED OFFENCES RELEVANT TO LABOUR MIGRATION

- Promotion of trafficking through recruitment agencies (Section 5);
- Fraudulent acquisition of travel documents (Section 6);
- Facilitation of cross-border trafficking (Section 7);
- Confiscation or concealment of travel documents (Section 8); and
- Trafficking resulting in life-threatening harm or death (Section 9).

The CTPA additionally establishes several victim-centred protections and support measures that may be invoked by practitioners when supporting victims of trafficking in person.

VICTIM-CENTRED PROTECTIONS AND SUPPORT MEASURES UNDER THE CTPA

- Victim confidentiality protections (Section 11);
- Restitution and compensation orders (Section 13);
- Immunity from prosecution for offences directly resulting from trafficking (Section 14);
- Legal assistance and psychosocial support (Section 15);
- Repatriation assistance (Section 18); and

Of particular significance, Section 25 of the Act provides for extraterritorial jurisdiction where a Kenyan citizen or permanent resident commits trafficking-related offences outside Kenya that would constitute offences if committed within Kenya. [30]

Certain parts of the CTiP Act are under review for amendments. This guide will therefore need to be revised should the Amendments be passed into law.

1.4.6 National Policy on Labour Migration

Kenya's National Policy on Labour Migration, adopted through Sessional Paper No. 5 of 2023, recognizes labour migration as an increasingly significant socio-economic phenomenon requiring coordinated governance, protection frameworks, and institutional oversight. [31] The Policy identifies several structural challenges affecting labour migration, while also setting out key priorities and strategic interventions.

KEY LABOUR MIGRATION GOVERNANCE CHALLENGES

- Weak coordination of labour migration management;
- Inadequate regulation of recruitment agencies;
- Violations of migrant workers' rights;
- Lack of accurate labour migration data;
- Inadequate return and reintegration mechanisms; and

[30] n33 ss 11-25.
[31] Ministry of Labour and Social Protection, Republic of Kenya, *Sessional Paper no. 5 of 2023 on the National Policy on Labour Migration*.

KEY LABOUR MIGRATION POLICY PRIORITIES

- Protection of migrant workers' rights;
- Regulation of private employment agencies;
- Pre-departure training and orientation;
- Anti-trafficking interventions;
- Reintegration and rehabilitation programmes; and
- Strengthening labour migration governance institutions.

The Policy additionally emphasizes the need for improved coordination between state institutions, enhanced labour migration data collection systems, regional and international cooperation, and stronger mechanisms to prevent exploitation of Kenyan migrant workers abroad.

1.4.7 Labour Migration Management Bill, 2024

At the time of writing, Kenya is considering the proposed Labour Migration Management Bill, 2024, which seeks to consolidate and modernize the country's labour migration governance framework.[32]

KEY REFORMS PROPOSED UNDER THE LABOUR MIGRATION MANAGEMENT BILL, 2024

- Regulate recruitment and deployment of Kenyan workers abroad;
- Strengthen oversight of private employment agencies;
- Enhance protection of migrant workers' rights and welfare;
- Introduce stricter accountability measures for recruitment agencies;
- Strengthen pre-departure safeguards and contract attestation procedures;
- Establish mechanisms for legal support, healthcare access, repatriation, and reintegration; and
- Criminalize exploitative recruitment practices, including contract substitution and withholding of documents.

The Bill further proposes a coordinated governance structure involving the National Employment Authority, Labour Attachés, county governments, and multi-agency oversight mechanisms aimed at strengthening labour migration management and migrant worker protection.

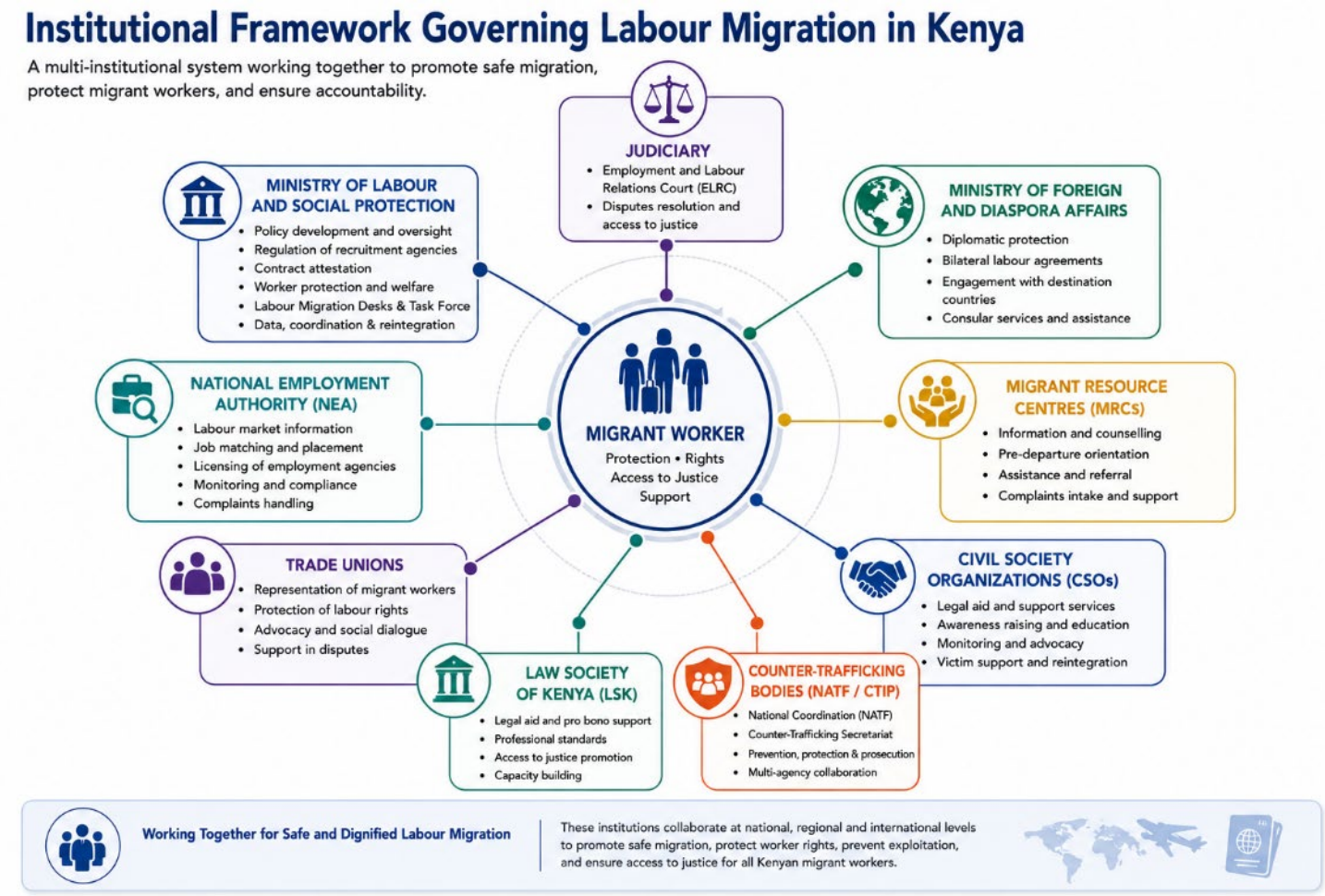
At the time of publication, however, the Labour Migration Management Bill, 2024 has not yet completed the legislative process and therefore does not yet constitute binding law. This Legal Roadmap may require updating once the Bill is enacted into law.

[32] Labor Migration Management Bill.

1.5 Institutional Framework Governing Labour Migration in Kenya

Labour migration governance in Kenya involves a multi-institutional framework composed of government ministries, regulatory authorities, diplomatic missions, law enforcement bodies, judicial institutions, trade unions, migrant support structures, and other actors responsible for regulating recruitment, facilitating overseas employment, protecting migrant workers, combating trafficking in persons, and responding to labour migration-related abuses.

The institutional framework reflects the multidimensional nature of labour migration, which intersects with labour regulation, immigration control, foreign affairs, criminal justice, social protection, human rights protection, and international cooperation. The institutions discussed below perform distinct but complementary functions in relation to labour migration management, migrant worker protection, accountability, and access to justice.



1.5.1 Ministry of Labour and Social Protection

The Ministry of Labour and Social Protection is the principal government institution responsible for labour migration governance in Kenya. Through the State Department for Labour and Skills Development, the Ministry regulates overseas recruitment, promotes safe and orderly migration, protects migrant workers' rights, and facilitates overseas employment for Kenyan nationals.[33]

The Ministry additionally collaborates with international organizations and destination countries on labour migration governance, labour standards, and worker protection initiatives. Its principal functions and responsibilities relating to labour migration governance are summarized in the text box below.[34]

KEY FUNCTIONS OF THE MINISTRY OF LABOUR AND SOCIAL PROTECTION IN LABOUR MIGRATION GOVERNANCE

- Development and implementation of labour migration policies;
- Regulation and oversight of overseas recruitment processes;
- Licensing and vetting of private recruitment agencies;
- Prevention of deceptive recruitment and trafficking in persons;
- Attestation of foreign contracts of service;
- Coordination of pre-departure orientation processes;
- Protection and welfare of Kenyan migrant workers abroad;
- Management of labour migration data and labour market trends;
- Coordination of labour migration governance mechanisms; and
- Support for reintegration of returning migrant workers.

The Ministry additionally collaborates with international organizations and destination countries on labour migration governance, labour standards, and worker protection initiatives.

Directorate of Labour Migration Management

Within the Ministry, the Directorate of Labour Migration Management is specifically mandated to coordinate labour migration governance and provide technical guidance on labour migration matters.[35] The Directorate therefore performs a central coordinating role in Kenya's labour migration governance framework and is often a key entry point for labour migration complaints, policy engagement, institutional coordination, and referrals relating to migrant worker protection and access to remedies.

[33] Ministry of Labour and Social Protection (Kenya), 'Vision, Mission & Mandate <https://www.labour.go.ke/vision-mission-mandate> accessed 20 May 2026.
[34] Ibid.
[35] Ministry of Labour and Social Protection (Kenya), 'Department<https://www.labour.go.ke/departments> accessed 20 May 2026.

KEY FUNCTIONS OF THE DIRECTORATE OF LABOUR MIGRATION MANAGEMENT

- Coordinating labour migration management;
- Providing information, technical advice, and services relating to labour migration;
- Developing legal and institutional frameworks governing labour migration;
- Promoting cooperation and partnerships on labour migration management;
- Promoting fundamental principles and rights at work for migrant workers;
- Promoting social dialogue and decent work programmes relating to labour migration;
- Implementing national and international labour migration policies and programmes;
- Advising and recommending on issuance of work permits;
- Monitoring labour migration and immigration trends;
- Implementing programmes supported by the International Labour Organization (ILO), International Organization for Migration (IOM), and related partners;
- Promoting international labour standards relating to migrant workers;
- Promoting safe and orderly labour migration;
- Developing reintegration programmes for returning migrant workers;
- Receiving and resolving labour complaints from migrant workers and/or next of kin; and
- Conducting research and dissemination of information relating to labour migration management.

Labour Migration Desks at International Airports

As part of efforts to strengthen oversight of outbound labour migration and prevent trafficking in persons, the Kenyan government has established dedicated Labour Migration Desks at major international airports.[36]

These desks are currently operational at:

- Jomo Kenyatta International Airport (JKIA), Nairobi; and
- Moi International Airport (MIA), Mombasa.

Outbound migrant workers are required to carry official clearance documentation and may undergo verification procedures before departure. The principal functions performed by Labour Migration

[36] 'Kenya Builds Frontline Capacity for Safe and Orderly Labour Migration' (*International Labour Organization*, February 8, 2026) < http://ilo.org/resource/article/kenya-builds-frontline-capacity-safe-and-orderly-labour-migration > accessed 20 May 2026.

Desks in support of safe migration, regulatory compliance, and prevention of trafficking in persons are summarized in the text box below.

KEY FUNCTIONS OF THE LABOUR MIGRTION DESKS AT INTERNATIONAL AIRPORTS

- Verification of visas and foreign employment contracts;
- Confirmation that contracts are properly attested and stamped;
- Verification of recruitment agency compliance and worker clearance documentation;
- Provision of pre-departure guidance on labour rights and safe migration; and
- Identification of potential trafficking or fraudulent recruitment situations.

Multi-Agency Task Force on Overseas Job Scams

The Kenyan government has additionally established a multi-agency task force led by the Ministry of Labour and Social Protection to investigate and prosecute fraudulent individuals and agencies involved in overseas job scams and deceptive recruitment schemes targeting Kenyan jobseekers.[37]

KEY FUNCTIONS OF THE MULTI-AGENCY TASK FORCE ON OVERSEAS JOB SCAMS

- Investigation of fraudulent overseas recruitment schemes;
- Identification and prosecution of rogue recruitment agents;
- Protection of jobseekers from exploitation and trafficking risks; and
- Coordination between relevant state agencies on labour migration enforcement matters.

For practitioners, the Multi-Agency Task Force may constitute an important referral mechanism in cases involving fraudulent recruitment, overseas job scams, deceptive recruitment practices, trafficking in persons, contract substitution, or other labour migration-related abuses involving recruitment intermediaries. Complaints may be submitted to the Ministry of Labour and Social Protection through the Directorate of Labour Migration Management, whose offices are located at NSSF Building, Block A, Eastern Wing, 14th Floor, Bishops Road, Nairobi.

It should also be noted that the Multi-Agency Task Force is an administrative initiative established by the current Government rather than a permanent institution expressly created by statute or formal policy; its structure, mandate, and operational modalities may evolve over time.

The initiative complements broader labour migration governance reforms, including implementation of the National Policy on Labour Migration and the proposed Labour Migration Management Bill, 2024.

[37] Kibii E, 'Multi-Agency Team Launched to Arrest Rogue Recruiters, Agencies' (*The Star*) < https://www.the-star.co.ke/news/2025-07-19-multi-agency-team-launched-to-arrest-rogue-recruiters > accessed 20 May 2026.

1.5.2 National Employment Authority (NEA)

The National Employment Authority ("NEA") is established under the National Employment Authority Act, No. 3 of 2016 and operates under the Ministry of Labour and Social Protection.[38]

KEY FUNCTIONS OF THE NATIONAL EMPLOYMENT AUTHORITY IN LABOUR MIGRATION GOVERNANCE

- Registration and licensing of recruitment agencies;
- Monitoring compliance by private employment agencies;
- Regulation of overseas recruitment processes;
- Facilitation of employment placement services;
- Maintenance of labour migration and employment records;
- Collection and management of labour migration data; and
- Administration of complaint and compliance mechanisms relating to recruitment agencies.

The Authority is responsible for regulating labour migration and employment placement systems in Kenya, including oversight of private recruitment agencies involved in overseas deployment of Kenyan workers.

The NEA therefore plays a central regulatory role in oversight of labour migration intermediaries and implementation of safeguards relating to overseas recruitment. [39]

Access to remedy through the NEA may include filing complaints against rogue recruitment agencies through the NEAIMS portal, telephone reporting mechanisms, or official email communication channels established by the Authority. These complaint mechanisms provide migrant workers and their families with accessible avenues for reporting recruitment related violations and seeking regulatory intervention.

[38] National Employment Authority Act 2016.
[39] ibid, s 8.

1.5.3 Ministry of Foreign and Diaspora Affairs

The Ministry of Foreign and Diaspora Affairs plays a key role in the external governance dimensions of labour migration, particularly in relation to labour diplomacy, protection of Kenyan nationals abroad, consular assistance, and engagement with destination countries on migrant worker protection issues.

KEY FUNCTIONS OF THE MINISTRY OF FOREIGN AND DIASPORA AFFAIRS IN LABOUR MIGRATION GOVERNANCE

- Negotiation of bilateral labour agreements and memoranda of understanding with destination countries;
- Protection and welfare of Kenyan workers abroad;
- Consular assistance and emergency response for distressed migrant workers;
- Repatriation assistance;
- Monitoring labour conditions affecting Kenyan nationals abroad;
- Coordination with foreign governments on migrant worker protection issues; and
- Promotion of diaspora engagement and remittance frameworks.

The Ministry performs a number of functions directly relevant to the welfare, protection, and assistance of Kenyan migrant workers abroad, which are summarized in the text box below.

The Ministry additionally deploys Labour Attachés in key destination countries, operating under Kenyan diplomatic missions.

LABOUR ATTACHES MAIN RESPONSIBILITIES

- Verification of job orders and employment documentation;
- Monitoring labour conditions affecting Kenyan workers abroad;
- Investigation of labour complaints and workplace abuses;
- Liaison with employers and foreign authorities; and
- Supporting enforcement of contractual protections for migrant workers.

1.5.4 Counter-Trafficking in Persons Structures

The Counter-Trafficking in Persons Advisory Committee and related structures established under the Counter-Trafficking in Persons Act, 2010 *supra* constitute key institutional mechanisms for prevention of trafficking in persons, victim protection, inter-agency coordination, and implementation of anti-trafficking measures in Kenya.

The institutional framework established under the Act includes:[40]

- The Counter-Trafficking in Persons Advisory Committee;
- The Secretariat; and
- The National Assistance Trust Fund for Victims of Trafficking in Persons ("NATF").

The Advisory Committee is mandated to coordinate anti-trafficking policies and programmes, promote prevention and protection measures, support rehabilitation and reintegration programmes, and strengthen cooperation among relevant institutions.

ASSISTANCE PROVIDED UNDER THE NATIONAL ASSISTANCE TRUST FUND FOR VICTIMS OF TRAFFICKING IN PERSON

- Shelter and relocation support;
- Medical and psychosocial care;
- Legal assistance;
- Repatriation support; and
- Other assistance measures for victims of trafficking in persons.

These structures are particularly relevant in cases involving trafficking linked to overseas recruitment, forced labour, forced criminality, or organized transnational exploitation networks.

1.5.5 Judiciary

The Judiciary of Kenya plays a central role in adjudication of labour migration-related disputes and enforcement of legal protections applicable to migrant workers.

Of particular relevance is the Employment and Labour Relations Court ("ELRC"), discussed *supra* which exercises jurisdiction over labour and employment disputes, including matters involving recruitment agencies, foreign contracts of service, labour rights violations, and employment-related claims arising from overseas deployment.

The Judiciary additionally plays an important role in interpretation and enforcement of constitutional protections, anti-trafficking legislation, criminal accountability frameworks, and access to justice safeguards relevant to labour migration-related abuses.

[40] n32, ss 19-26.

1.5.6 Migrant Worker Resource Centres

KEY MIGRANT RESOURCE CENTRES

- The Kenya Labour Migrant Resource Centres established through the ILO FAIRWAY Programme in Nairobi, embedded in and run by NEA at the following locations:
  - Nairobi,
  - Eldoret;
  - Thika
  - Kisumu;
  - Mombasa; and
  - Machakos.
- A Nairobi based Migrant Resource Centre embedded in and run by COTU-Kenya.

Migrant Worker Resource Centres ("MRCs") operate in Kenya as support and information hubs aimed at promoting safe, orderly, and regular labour migration. Several of these centres operate with support from the International Labour Organization, particularly through programmes focused on labour migration governance and prevention of exploitation.[41]

SERVICES PROVIDED BY MRCs

- Verification of licensed recruitment agencies;
- Pre-departure orientation and labour rights awareness;
- Information on safe recruitment pathways;
- Legal guidance and counselling;
- Complaint referral mechanisms;
- Reintegration support for returning migrant workers; and
- Training and livelihood support initiatives.

1.5.7 Trade Unions

The Central Organization of Trade Unions ("COTU-Kenya") is Kenya's national trade union federation and engages in labour migration governance through policy advocacy, labour rights protection, and migrant worker support initiatives[42], as summarized in the text box below.

[41] 'Migrant Worker Resource Centres' (*International Labour Organization*, May 14, 2018) < https://www.ilo.org/resource/other/migrant-worker-resource-centres > accessed 20 May 2026.
[42] 'Central Organization of Trade Unions (COTU-K) – All Workers, One Voice' (*Central Organization of Trade Unions (COTU-K)*) < https://cotu-kenya.org/ > accessed 20 May 2026.

KEY CONTRIBUTIONS OF TRADE UNIONS TO MIGRANT WORKER PROTECTION

- Advocacy relating to labour migration governance and migrant worker protection;
- Engagement in labour migration policy reform processes;
- Reporting and advocacy before international labour and human rights mechanisms;
- Support for migrant worker awareness and outreach programmes; and
- Operation of Migrant Resource Centres providing guidance and support to migrant workers.

Central Organization of Trade Unions (COTU-Kenya)

The Central Organization of Trade Unions ("COTU-Kenya") is Kenya's national trade union federation and engages in labour migration governance through policy advocacy, labour rights protection, and migrant worker support initiatives.[43]

COTU-Kenya additionally contributes to labour migration discussions concerning regional labour mobility, migrant worker protections, and reform of labour migration systems affecting Kenyan workers abroad.[44]

Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA)

The Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers ("KUDHEIHA") plays a particularly significant role in representation and protection of domestic workers, including migrant domestic workers.[45]

The union has contributed to labour rights advocacy and policy reforms relating to domestic workers, including advocacy connected to Kenya's ratification of international labour standards concerning domestic work and workplace violence.

KUDHEIHA additionally engages in legal advocacy and strategic litigation concerning abuses affecting migrant domestic workers, including cases involving trafficking in persons, exploitation, and labour rights violations arising within overseas employment contexts.

1.5.8 Civil Society Organizations (CSOs)

Civil society organizations ("CSOs") play an important complementary role in advancing access to remedy for migrant workers, particularly in situations where survivors face financial, legal,

[43] 'Central Organization of Trade Unions (COTU-K) – All Workers, One Voice' (*Central Organization of Trade Unions (COTU-K)*) < https://cotu-kenya.org/ > accessed 20 May 2026.
[44] ibid.
[45] "Kudheiha – KUDHEIHA WORKERS" < https://www.kudheiha.org/ > accessed 20 May 2026.

informational, or psychosocial barriers to justice. Through advocacy, case management, documentation, and referral support, CSOs often act as intermediaries between migrant workers and formal justice or protection mechanisms.

One of the key roles played by CSOs is facilitating access to immediate and short term assistance for migrant workers through applications to the National Assistance Trust Fund ("NATF"). CSOs may file NATF applications on behalf of migrant workers and survivors of trafficking or exploitation in order to support access to emergency assistance and other available support services.

CSOs working on access to justice ("AtJ") additionally play a catalytic role in facilitating legal redress for migrant workers. This may include linking migrant workers with advocates willing to take up their cases, supporting legal referrals, and assisting survivors to navigate complex justice processes. Such organizations often bridge gaps that would otherwise prevent migrant workers from pursuing legal claims or administrative complaints.

Civil society organizations also contribute significantly to documentation and evidence preservation. This includes recording testimonies, documenting patterns of abuse, preserving employment related documents and communications, and supporting survivors in organizing evidence relevant to legal or administrative proceedings. Proper documentation is often critical in strengthening complaints and improving prospects for accountability.

In addition, CSOs may assist migrant workers in filing complaints and applications before various administrative and regulatory bodies, including the National Employment Authority, the Counter Trafficking in Persons Secretariat, labour offices, diplomatic missions, and other relevant state institutions. Through these interventions, civil society organizations contribute significantly to enhancing access to justice, accountability, and protection for migrant workers.

1.5.9 Law Society of Kenya-LSK

The Law Society of Kenya ("LSK") is the national bar association and statutory regulator of advocates in Kenya, established under the Law Society of Kenya Act. The Society plays a central role in the administration of justice and the legal profession, and is mandated to regulate and maintain standards of professional conduct among advocates, uphold the Constitution and the rule of law, protect and assist the public in matters relating to the law, and promote access to justice[46].

The functions of the Society include regulating the legal profession, supporting continuing professional development for advocates, advising the Government, Parliament, and the Judiciary on matters relating to law and the administration of justice, promoting and protecting human rights and constitutionalism, advancing public interest litigation, and facilitating public legal awareness and legal aid initiatives.

[46] The Law Society of Kenya Act, revised in 2023.

The Society is also an important stakeholder with the potential to contribute significantly to advancing access to justice for migrant workers through its Continuing Professional Development (CPD), Gender, and Public Interest Litigation (PIL) Committees. Although the Society does not presently undertake targeted labour migration programming, it possesses considerable institutional capacity that could be leveraged to strengthen legal protection and accountability frameworks for migrant workers.In particular, the LSK could utilise its CPD structures to offer specialised training and labour migration courses for advocates handling labour migration and human trafficking cases. Such professional training would contribute to strengthening legal representation and improving the quality of advocacy in labour migration related litigation.

Through its Public Interest Litigation Committee, the Society could additionally support strategic litigation and facilitate uptake of select labour migration and trafficking related cases, particularly those involving systemic rights violations. This would align with the LSK's broader mandate of upholding the rule of law, defending the Constitution of Kenya, and protecting fundamental rights and freedoms through public interest interventions.

The LSK may also play an important advisory role to the courts in labour migration related matters. For example, the Society could appear as amicus curiae in strategic labour migration or trafficking cases in order to provide expert legal perspectives on emerging issues affecting migrant workers, labour rights, and access to remedy. Such interventions could support development of jurisprudence and strengthen judicial understanding of the unique vulnerabilities arising within labour migration systems.

Additionally, through its broader public protection mandate, the LSK may contribute to enhancing access to justice by supporting legal aid initiatives, facilitating referrals to advocates, and assisting vulnerable migrant workers to navigate legal and administrative processes.

Conclusion

Labour migration has become an increasingly significant component of Kenya's socio-economic landscape, driven by unemployment, economic pressures, and the growing normalization of overseas employment as a livelihood strategy. At the same time, the expansion and diversification of labour migration corridors have exposed Kenyan migrant workers to complex and evolving forms of exploitation, including trafficking in persons, forced labour, forced criminality, deceptive recruitment, gender-based violence, and other serious human rights violations. As demonstrated throughout this chapter, these abuses often occur across multiple stages of the migration cycle and frequently engage overlapping legal, institutional, and protection frameworks.

The chapter has further demonstrated that labour migration-related abuses cannot be understood solely as labour disputes. Depending on the circumstances, such violations may simultaneously raise constitutional, criminal, civil, labour, administrative, immigration, and human rights concerns. The legal characterization of abuse is therefore central in determining the appropriate

legal framework, competent institutions, available remedies, survivor protection measures, and pathways toward accountability.

Kenya has developed an extensive domestic legal and institutional framework aimed at regulating labour migration, protecting migrant workers, combating trafficking in persons, and facilitating access to justice. Constitutional protections, labour legislation, anti-trafficking laws, employment regulations, policy frameworks, and judicial mechanisms collectively establish important safeguards relevant to migrant worker protection and accountability. Equally important are the various state and non-state institutions involved in labour migration governance, including the Ministry of Labour and Social Protection, the National Employment Authority, the Ministry of Foreign and Diaspora Affairs, the Judiciary, trade unions, migrant support centres, civil society organizations, and professional bodies such as the Law Society of Kenya.

However, despite the existence of these frameworks, significant protection and accountability gaps remain. Weak enforcement, irregular recruitment practices, fragmented complaint mechanisms, inadequate access to legal representation, limited survivor support systems, and transnational barriers to accountability continue to undermine effective access to remedy for many migrant workers and survivors of abuse. Emerging migration routes linked to conflict zones, cyber-enabled exploitation, and organized criminal networks further demonstrate the rapidly evolving nature of labour migration risks facing Kenyan workers abroad.

Understanding the legal and institutional framework governing labour migration is therefore essential for lawyers, judges, investigators, policymakers, civil society actors, and frontline practitioners seeking to respond effectively to labour migration-related abuses. This chapter provides the foundational context necessary for navigating the broader Legal Roadmap and for identifying the legal strategies, institutional mechanisms, and remedial pathways that may be mobilized to secure protection, accountability, and effective remedies for migrant workers and survivors of abuse. The following chapters are built upon this foundation by examining the specific judicial, administrative, non-judicial, and advocacy mechanisms through which those remedies may be pursued in practice.

Chapter 2: Judicial Remedies Available to Migrant Workers in Kenya

Judicial remedy refers to the right of individuals to seek justice and obtain relief through courts of law for violations of their rights. In the context of labour migration, judicial remedies are particularly important for migrant workers and their families who have suffered exploitation, trafficking, forced labour, physical or sexual abuse, wage theft, unlawful confinement, or other violations connected to recruitment and employment processes.

Under international human rights law, States have a duty to ensure equal and effective access to justice and to provide effective remedies for violations of rights. This obligation includes establishing accessible and functioning courts and tribunals capable of adjudicating claims independently, fairly, promptly, and effectively[47]. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation further affirm that victims have the right to equal and effective access to justice, adequate and prompt reparation, access to relevant information concerning violations and available remedies[48].

Judicial remedies are distinct from non-judicial or administrative remedies because they are limited to remedies granted through judicial proceedings before national courts or tribunals exercising judicial functions. These remedies may arise through criminal proceedings, civil litigation, constitutional petitions, labour disputes, or public interest litigation. While non-judicial mechanisms such as mediation, administrative complaints, diplomatic interventions, or labour dispute mechanisms may provide forms of assistance or resolution, access to judicial remedies must always remain available. International standards recognize that other administrative or alternative mechanisms may coexist alongside judicial remedies, but they do not replace the State's obligation to guarantee access to courts and fair proceedings[49].

In labour migration cases, judicial remedies may serve multiple functions beyond financial compensation alone. They may provide recognition of harm suffered, official acknowledgment of wrongdoing, accountability for perpetrators, protection from continuing abuse, access to truth, restoration of dignity, and guarantees of non-repetition. Judicial processes may also contribute to broader structural reforms by exposing patterns of abuse, institutional failures, and gaps in protection systems affecting migrant workers. Depending on the nature of the proceedings, remedies may include criminal sanctions, compensation, restitution of unpaid wages, damages for physical or psychological harm, injunctions, declarations of rights violations, rehabilitation measures, or court orders compelling state authorities or private actors to take corrective action[50].

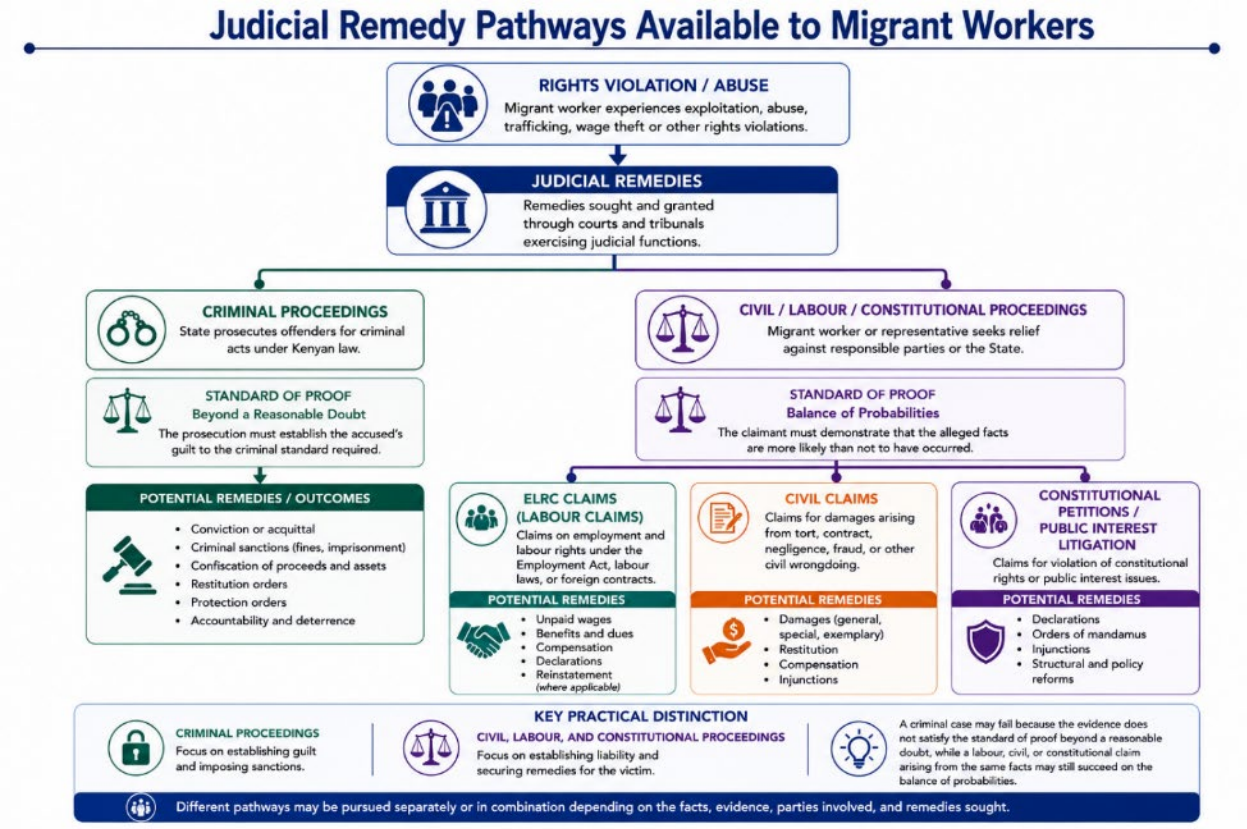
---

[47] UNGA Res 60/147 (16 December 2005) UN Doc A/RES/60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.
[48] ibid.
[49] International Commission of Jurists, *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide* (October 2018).
[50] ibid.

International standards recognize restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition as important forms of reparation available to victims.

An effective judicial remedy must be practical and accessible both in law and in practice. International human rights standards emphasize that remedies must be prompt, impartial, enforceable, and capable of leading to meaningful reparation[51]. Access to justice also requires measures to reduce barriers faced by victims, including intimidation, financial obstacles, lack of legal representation, language barriers, and procedural complexities, all of which frequently affect migrant workers and survivors of trafficking and labour exploitation. States are further encouraged to provide legal aid, facilitate collective claims, protect victims and witnesses, and ensure that judicial mechanisms are responsive to the vulnerabilities of affected individuals.

In Kenya, migrant workers and their families may pursue different forms of judicial remedies depending on the nature of the violations suffered, the available evidence, the identity of the responsible actors, and the desired outcome. The following sections examine the main judicial avenues available under Kenyan law, including criminal liability, civil liability, constitutional and public interest litigation, evidentiary considerations, and measures aimed at reducing financial and procedural barriers to justice. Each pathway may lead to different forms of remedy and may be pursued independently or alongside other legal and non-judicial mechanisms.



[51] ibid.

As later discussed in Chapter 3, judicial remedies coexist alongside administrative, quasi-judicial, and non-judicial mechanisms. In practice, migrant workers frequently pursue multiple avenues simultaneously in order to maximize protection, accountability, and access to remedy.

2.1 Criminal Liability

Criminal liability constitutes one of the principal accountability mechanisms available under Kenyan law in cases involving labour migration-related abuses, particularly where the conduct amounts to trafficking in persons, forced labour, fraudulent recruitment, exploitation, unlawful deployment, document confiscation, deception, or other criminal offences connected to the recruitment and deployment of migrant workers abroad. Depending on the nature of the offence, criminal proceedings may result in imprisonment, fines, confiscation of proceeds of crime, closure or deregistration of recruitment agencies, and, in certain cases, victim compensation or restitution orders.

In the labour migration context, criminal proceedings serve not only a punitive function but may also contribute to broader protection and prevention objectives. In particular, criminal investigations and prosecutions may:

POTENTIAL PROTECTIVE AND PREVENTIVE BENEFITS OF CRIMINAL PROCEEDINGS

- Interrupt ongoing exploitation;
- Dismantle trafficking or recruitment networks;
- Prevent further recruitment of victims;
- Trigger protective interventions for individuals still at risk; and
- Reinforce deterrence against abusive recruitment practices.

Criminal proceedings may therefore constitute an important form of remedy capable of contributing to accountability, recognition of harm, guarantees of non-repetition, and protection of other potential victims. In situations involving ongoing exploitation or organized recruitment schemes, criminal intervention may be necessary not only to seek accountability for past abuses, but also to secure the cessation of ongoing violations affecting additional migrant workers.

At the same time, criminal proceedings are often lengthy, highly evidentiary, and institutionally demanding. Unlike civil proceedings, where liability is generally established on a balance of probabilities, criminal liability must be proved beyond reasonable doubt. This constitutes the highest evidentiary standard within the Kenyan legal system and requires the prosecution to establish all elements of the offence with sufficient certainty to sustain a conviction. In practice, this may present significant challenges in labour migration-related cases, particularly where abuses occurred abroad, documentary evidence is limited, witnesses remain overseas, victims suffer trauma-related memory gaps, or relevant evidence remains under the control of employers, recruiters, or intermediaries.

Although the legal burden of proof formally rests upon the prosecution and investigative authorities, migrant workers and survivors frequently carry substantial practical burdens throughout the process. In many labour migration-related cases, the survivor's account constitutes the primary or only available source of evidence, particularly where exploitation occurred in highly controlled environments. Victims are often required to:

POTENTIAL RESPONSIBILITIES AND CHALLENGES FOR VICTIMS AND WITNESSES IN CRIMINAL PROCEEDINGS

- Report the offence;
- Provide detailed witness statements;
- Identify perpetrators or intermediaries;
- Preserve available communications and documentation;
- Assist investigators throughout the investigation;
- Testify in court; and
- Endure lengthy proceedings and cross-examination.

These realities require careful strategic consideration before pursuing criminal proceedings. Criminal prosecution is not necessarily the most appropriate or beneficial avenue in every case, particularly where the survivor's primary objective is rapid compensation, economic reintegration, confidentiality, psychological recovery, or avoidance of re-traumatization. Importantly, under the Kenyan legal system, criminal proceedings are not a prerequisite for pursuing civil claims or labour-related remedies. A survivor may therefore elect to pursue civil, constitutional, labour, or administrative remedies independently of criminal prosecution.

Nevertheless, certain situations may strongly favour criminal accountability.

INDICATORS THAT CRIMINAL PROCEEDINGS MAY BE APPROPRIATE

- There is evidence that additional victims remain exposed to the same perpetrators or recruitment structures;
- The conduct involves trafficking in persons, organized criminal activity, forced labour, sexual violence, unlawful confinement, or serious physical abuse;
- The exploitation reflects repeated or systematic conduct by perpetrators; or
- The seriousness of the abuse requires punitive accountability beyond financial compensation alone.

In such circumstances, criminal intervention may be essential not only to pursue justice for the individual survivor, but also to prioritize the safety of individuals who may still be subjected to ongoing exploitation.

Similarly, some cases may present particularly strong prospects for criminal prosecution where substantial corroborative evidence exists. Equally important, however, is the need to understand the survivor's preferred avenue for remedy. In some cases, survivors may primarily seek acknowledgment of harm, compensation, safe repatriation, family support, or psychosocial recovery. In others, survivors may specifically view imprisonment of the perpetrator as an essential component of justice. A survivor-centred approach therefore requires practitioners to assess not only legal viability and evidentiary strength, but also the survivor's objectives, safety, vulnerabilities, expectations, and capacity to participate in criminal proceedings.

2.1.1 Principal Criminal Frameworks Applicable to Migrant Worker Exploitation

Kenyan law establishes a number of criminal offences that may be investigated and prosecuted in response to labour migration-related abuses involving migrant workers, particularly under:

- the Labour Institutions Act, 2007 ("LIA");
- the Employment Act, 2007 ("EA"); and
- the Counter-Trafficking in Persons Act, 2010 ("CTPA");
- other applicable criminal laws, including relevant provisions of the Penal Code.

These legal frameworks may apply simultaneously depending on the factual circumstances of the case**.** In certain cases, particularly those involving deceptive recruitment practices, fraudulent job offers, false representations regarding licensing or employment conditions, forgery, obtaining money by false pretenses, conspiracy, assault, or other criminal conduct occurring during the recruitment and deployment process, the same facts may potentially engage both offences under the Penal Code and offences specifically created by labour migration and anti-trafficking legislation.

2.1.2 Labour Institutions Act, 2007

The Labour Institutions Act establishes the regulatory framework governing labour institutions and employment agencies operating in Kenya. Recruitment agencies are deemed labour institutions under the Act and must be registered and licensed by the National Employment Authority before undertaking recruitment activities.

KEY OBLIGATIONS OF RECRUITMENT AGENCIES UNDER THE LABOUR INSTITUTIONS ACT

- maintain operational and deployment records relating to migrant workers;
- retain such records for inspection;
- furnish statistical and operational information when requested by labour authorities; and
- comply with regulatory oversight obligations.

Failure to comply with these obligations may constitute a criminal offence punishable by fines and/or imprisonment. Although the penalties provided under the Labour Institutions Act are relatively modest, regulatory breaches may nevertheless provide important evidence supporting broader labour, civil, constitutional, trafficking, or administrative proceedings arising from the same conduct. Situations in which these violations may be particularly relevant are summarized in the text box below.

REGULATORY RED FLAGS IN LABOUR MIGRATION CASES

- unlicensed recruitment agencies;
- irregular or informal recruitment structures;
- fraudulent brokers or intermediaries;
- undocumented deployment practices; and
- recruitment schemes operating outside the formal regulatory framework.

2.1.3 Employment Act, 2007

The Employment Act constitutes Kenya's primary legislation regulating employment relationships and foreign contracts of service. Of particular relevance to migrant workers are Sections 83–86 governing overseas employment arrangements.[52]

Under the Act, migrant workers deployed abroad must enter into a valid foreign contract of service prior to departure.

FORMAL REQUIREMENTS FOR A VALID FOREIGN CONTRACT OF SERVICE

- Be in writing;
- Be signed by the parties; and
- Be attested by a Labour Officer before deployment abroad.

The attestation process serves as an important pre-departure safeguard intended to protect migrant workers from deceptive recruitment, coercive deployment, and unlawful employment practices.

KEY SAFEGUARDS VERIFIED DURING CONTRACT ATTESTATION

- Free and informed consent;
- Absence of fraud, coercion, or misrepresentation;
- Compliance with Kenyan labour law;
- Fairness of contractual terms; and
- Legality of the recruitment process.

[52] n27, ss 83-86.

Before attesting a foreign contract of service, the Labour Officer must be satisfied that the conditions summarized in the text box below have been met.

Section 84 of the Act additionally requires security bonds where the foreign employer is not resident in Kenya, creating an additional layer of accountability for recruitment agencies acting as local agents.

Section 86 of the Employment Act criminalizes the facilitation of overseas employment without a valid foreign contract of service. Recruitment agencies or intermediaries who knowingly deploy workers abroad without complying with these statutory safeguards may incur criminal liability, including fines and imprisonment.

The significance of these safeguards was reinforced in *Kifano v. Loivin*, where the recruitment agency failed to provide evidence of a valid foreign contract of service and the required security bond.[53] The Court held that the failure to comply with these statutory safeguards exposed the migrant worker to exploitation. The case is particularly important because it demonstrates how failures to comply with labour migration safeguards may contribute directly to abusive recruitment and deployment practices affecting migrant workers abroad. The case further illustrates that compliance failures occurring entirely within Kenya may generate liability even where the resulting exploitation occurs abroad, thereby reinforcing the importance of recruitment-stage accountability.

2.1.4 Counter-Trafficking in Persons Act, 2010

The Counter-Trafficking in Persons Act, 2010 ("CTPA") constitutes Kenya's principal criminal framework addressing trafficking in persons and labour trafficking-related exploitation. The Act implements Kenya's obligations under the Palermo Protocol and the United Nations Convention against Transnational Organized Crime.[54]

SITUATIONS IN WHICH THE CTPA MAY APPLY TO LABOUR MIGRATION CASES

- Deceptive recruitment;
- Fraudulent overseas job offers;
- Exploitation through coercion or abuse of vulnerability;
- Forced labour;
- Forced criminality;
- Confiscation of travel documents;
- Recruitment linked to organized criminal networks; and
- Exploitative recruitment agency practices.

[53] *Kifano v Loivin Limited & 4 others* [2024] KEELRC 13536 (KLR) (27 November 2024).
[54] n32.

Section 3 of the Act criminalizes trafficking in persons, including the recruitment, transportation, transfer, harbouring, or receipt of persons for purposes of exploitation. The prohibited means most encountered in labour migration and trafficking cases are summarized in the text box below.[55]

PROHIBITED MEANS OF TRAFFICKING IN PERSONS UNDER THE CTPA

- Force;
- Coercion;
- Fraud;
- Deception;
- Abuse of power; or
- Abuse of vulnerability.

Importantly, consent becomes legally irrelevant where any prohibited means are used. Exploitation is broadly defined and includes slavery, practices analogous to slavery, forced labour, involuntary servitude, and sexual exploitation.

In addition to criminalizing trafficking in persons itself, the CTPA creates a number of related offences aimed at disrupting trafficking networks, preventing facilitation of exploitation, and strengthening accountability of individuals and entities involved in trafficking-related activities. Key offences relevant to labour migration cases are summarized in the text box below.

ADDITIONAL TRAFFICKING-RELATED OFFENCES UNDER THE CTPA

- Promotion of trafficking through recruitment agencies;
- Financing trafficking operations;
- Fraudulent acquisition or misuse of travel documents;
- Facilitation of cross-border trafficking; and
- Confiscation or concealment of travel documents.

The penalties under the CTPA are severe. Convictions may result in lengthy imprisonment terms, substantial fines, or life imprisonment in aggravated circumstances, including where trafficking causes death, serious harm, or involves organized criminal groups.

Kenyan jurisprudence demonstrates both the strength of the statutory framework and the practical difficulties associated with trafficking prosecutions. In *Mbashani v Republic*, convictions under Section 3 of the CTPA were upheld, although one sentence was reduced on appeal for being excessive in light of the circumstances of the offender.[56] Conversely, in *Francis Njuguna Kagunda & another v Republic*, trafficking convictions and severe penalties were quashed due to insufficient

[55] ibid, s3.
[56] *Maduku Mbashani & another v Republic* [2019] KEHC 9694 (KLR).

evidence and failure to call key witnesses. [57]These cases illustrate the central importance of proper investigation, corroborative evidence, witness management, and procedural compliance in trafficking prosecutions.

Importantly, the CTPA recognizes that access to justice for victims of trafficking extends beyond the prosecution and punishment of offenders. In addition to criminal sanctions, courts may order a range of victim-centred remedies aimed at addressing the harm suffered and supporting recovery, rehabilitation, and reintegration. Key remedies available under the Act are summarized in the text box below.

VICTIM-CENTRED REMEDIES AVAILABLE UNDER THE CTPA

- restitution;
- compensation;
- payment of medical or psychological treatment costs;
- accommodation and transportation support; and
- other relief considered just by the court.

The Act further provides for confiscation and forfeiture of proceeds of trafficking offences, with certain assets directed to the National Assistance Trust Fund ("NATF"), which may function as a secondary source of victim compensation where offenders lack sufficient assets.

This asset-recovery framework has also been reflected in practice. In *Geoffrey Mutemi v Republic*, the Court ordered KES 10 million to be deposited into the National Assistance Trust Fund following a trafficking conviction, illustrating the potential role of confiscation measures in supporting victim compensation mechanisms.[58]

The CTPA additionally reduces financial barriers for survivors by exempting victims from court fees in civil proceedings relating to trafficking-related harm.

Finally, the CTPA contains an important extraterritorial jurisdiction provision permitting prosecution where a Kenyan citizen or permanent resident commits trafficking-related offences outside Kenya that would constitute offences if committed within Kenyan territory. This provision is particularly significant in cases involving Kenyan recruitment agencies, intermediaries, or facilitators operating transnationally within labour migration schemes.

2.1.5 Reporting and Investigation Mechanisms for Public Prosecution

The Office of the Director of Public Prosecutions ("ODPP") is established under Article 157 of the Constitution of Kenya as an independent office mandated to direct and control the prosecution of criminal offences. Headquartered in Nairobi with offices across the country, the ODPP exercises

[57] *Francis Njuguna Kagunda & another v Republic* [2022] eKLR.
[58] *Geoffrey Mutemi Manzi v Republic* [2021] eKLR, Criminal Appeal No 39 of 2020.

State prosecutorial powers and plays a central role in Kenya's criminal justice system, including determining whether criminal proceedings should be instituted, continued, or discontinued in accordance with the Constitution and applicable law. The ODPP is therefore a key institution in cases involving trafficking in persons, forced labour, labour exploitation, recruitment-related offences, and other criminal conduct affecting migrant workers. Its principal prosecutorial powers are summarized in the text box below.

KEY PROSECUTORIAL POWERS OF THE ODPP

- Institute and undertake criminal proceedings;
- Take over prosecutions initiated by other persons or authorities; and
- Discontinue proceedings at any stage before judgment, subject to constitutional safeguards.

Reporting of Cases to the Police and the ODPP

In practice, criminal proceedings typically commence with the reporting of an offence to the police. Before a matter is referred to the Office of the Director of Public Prosecutions for charging decisions, law enforcement authorities will ordinarily undertake initial intake, documentation, and investigative steps. These initial procedures are summarized in the text box below.

INITIAL STEPS FOLLOWING REPORTING OF A CRIMINAL OFFENCE

- Victims or complainants record statements;
- Witnesses may be interviewed;
- Preliminary evidence is collected; and
- A police case file is opened and assigned a reference number.

The police subsequently conduct investigations and forward the file to the ODPP for a determination on whether criminal charges should be instituted.

Within the National Police Service, the Directorate of Criminal Investigations ("DCI") operates specialized investigative units relevant to trafficking and labour migration-related offences, including:

- the Anti-Human Trafficking and Child Protection Unit; and
- the Transnational Organized Crimes Unit.

These units may become involved particularly in cases involving cross-border trafficking, organized recruitment structures, exploitation networks, or child victims.

Although significant capacity-building efforts have been undertaken, practical implementation of anti-trafficking laws may remain uneven across institutions. Practitioners should therefore be prepared to provide supporting legal analysis, evidence, and referrals where necessary. Victims

and complainants may also escalate concerns directly to the ODPP where investigations or prosecutions appear mishandled. Situations in which such engagement may be considered are summarized in the text box below.

SITUATIONS IN WHICH DIRECT ENGAGEMENT WITH THE ODPP MAY BE CONSIDERED

- Complainants whose reports have not been acted upon by police;
- Individuals dissatisfied with investigative delays or failures;
- Persons who believe prosecutorial decisions were improper; or
- Advocates acting on behalf of affected migrant workers or victims.

While complainants and their representatives may engage with the ODPP regarding investigative or prosecutorial concerns, the decision whether to institute or continue criminal proceedings ultimately remains within the prosecutor's independent discretion and will depend largely on whether the available evidence is considered sufficient to support a realistic prospect of conviction before the court.

Cross-Border Cooperation and Transnational Investigations

Given the transnational nature of trafficking and labour migration-related exploitation, criminal investigations frequently require cooperation between Kenyan authorities and foreign jurisdictions. In relation to cross-border trafficking investigations and related criminal matters, Kenya has collaborated with a number of countries, including Tanzania, Uganda, Ethiopia, South Sudan, Canada, Germany, and the United States.

Such cooperation may take a variety of forms, which are summarized in the text box below.

COMMON FORMS OF INTERNATIONAL COOPERATION IN TRAFFICKING INVESTIGATIONS

- Exchange of investigative information;
- Tracing of recruitment networks;
- Verification of immigration or travel records;
- Identification of victims or suspects across jurisdictions; and
- Mutual legal assistance processes.

Despite the availability of international cooperation mechanisms, the effectiveness of transnational investigations continues to depend heavily upon the quality of available evidence, the preservation of documentary and digital records, effective coordination between investigative and prosecutorial authorities, victim and witness participation, and the strength of investigative files prepared before matters are referred for prosecution.

Victim and Witness Protection Considerations

In trafficking, labour exploitation, and gender-based violence cases involving migrant workers, lawyers should assess victim and witness protection needs from the earliest reporting and investigation stages, particularly where survivors may face intimidation, retaliation, stigma, economic dependency, or trauma-related barriers to participation in criminal proceedings. The most common protection risks encountered in labour migration, trafficking, and gender-based violence cases are summarized in the text box below.

COMMON PROTECTION RISKS FACED BY MIGRANT WORKER VICTIMS AND WITNESSES

- Retaliation by recruiters, brokers, or intermediaries;
- Intimidation aimed at discouraging testimony;
- Social stigma and family pressure;
- Re-traumatization during investigations and court proceedings; and
- Fear of reprisals against relatives remaining abroad or in destination countries.

The Counter-Trafficking in Persons Act requires law enforcement authorities, courts, and all persons involved in investigations or proceedings to protect the privacy and confidentiality of trafficking victims and witnesses. Unlawful disclosure of identifying information may constitute a criminal offence.

In addition, the Victim Protection Act, 2014 establishes broader victim-centred safeguards applicable irrespective of nationality or immigration status, including protection from secondary victimization, access to legal and social services, interpretation where necessary, culturally sensitive treatment, and referral to the Witness Protection Agency where intimidation or retaliation risks arise.[59] The Agency may provide relocation, identity protection, security measures, and other forms of assistance where serious risks to witnesses exist. Key measures that practitioners should consider requesting are summarized in the text box below.

VICTIM AND WITNESS PROTECTIONS FOR PRACTITIONERS TO CONSIDER

- Confidentiality measures relating to victim identity and personal information;
- Trauma-informed interviewing practices;
- Interpretation services;
- Psychosocial support referrals;
- Safe shelter referrals;
- Protective courtroom arrangements where available; and
- Referral to the Witness Protection Agency in cases involving credible threats or intimidation.

[59] Victim Protection Act, 2014.

Although implementation remains uneven in practice, protection measures may nevertheless be critical in sustaining victim participation and preserving the integrity of criminal proceedings involving migrant workers and survivors of trafficking or GBV.

2.1.6 Public Prosecution in Practice

In practice, the existence of criminal offences under the Labour Institutions Act, Employment Act, and Counter-Trafficking in Persons Act does not automatically result in investigations, prosecutions, or convictions. Labour migration-related criminal cases frequently encounter significant operational, evidentiary, institutional, and transnational challenges that may affect the willingness or ability of authorities to pursue proceedings effectively.

Trafficking and labour migration-related exploitation cases are often highly complex. The abuses may occur partly or entirely outside Kenya, involve multiple intermediaries operating across jurisdictions, rely on informal recruitment structures, or concern conduct occurring within private households abroad where independent evidence is difficult to obtain. Victims may additionally return to Kenya traumatized, undocumented, economically vulnerable, fearful of retaliation, or unwilling to participate in lengthy criminal proceedings.

Several practical and institutional factors may affect the effectiveness of criminal investigations and prosecutions in labour migration cases. Common challenges are summarized in the text box below.

COMMON CHALLENGES IN LABOUR MIGRATION-RELATED CRIMINAL PROSECUTIONS

- delayed investigations;
- insufficient evidence collection;
- failure to preserve digital or documentary evidence;
- inadequate witness protection measures;
- lack of specialized investigative capacity;
- limited understanding of trafficking indicators;
- reluctance to pursue certain perpetrators;
- jurisdictional complications involving foreign actors; and
- difficulties securing cooperation from destination countries.

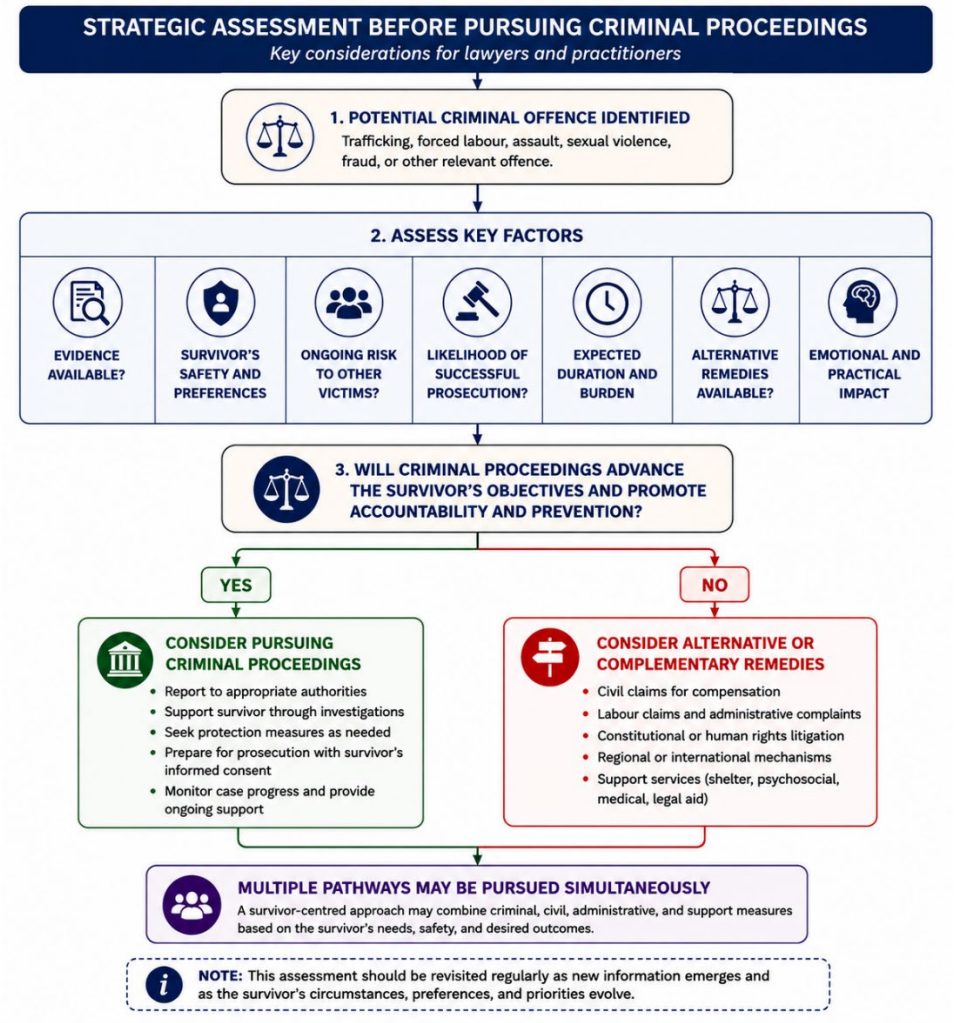
These challenges are significant because many trafficking and labour exploitation cases rely heavily upon survivor testimony. Documentary evidence is frequently absent, incomplete, confiscated, or controlled by perpetrators. Weak investigations or failure to secure corroborative evidence may therefore substantially undermine criminal proceedings.

Kenyan jurisprudence illustrates these practical realities. In the case of *Francis Njuguna*, supra trafficking convictions and severe penalties were quashed due to insufficient evidence and failure

to call key witnesses.[60] Conversely, *Mbashani* supra demonstrates that properly investigated and evidenced trafficking prosecutions may sy result in sustained convictions under the CTPA. [61]

Procedural irregularities may equally undermine prosecutions. In *Hamed v Republic*, a trafficking conviction carrying a 20-year sentence was overturned on appeal due to procedural defects concerning the guilty plea process.[62]

These cases demonstrate that successful criminal accountability depends as much on evidence and procedure as on the underlying facts. Specialized documentation, preservation of digital evidence, trauma-informed interviewing, and early legal support may strengthen the prospects of prosecution. Practitioners should nevertheless assess whether criminal proceedings are appropriate in the circumstances. Key considerations are illustrated in the figure below.



[60] n64.
[61] n63.
[62] *Hamed Abdullahi Hamed v Republic* [2017] eKLR, Criminal Appeal No 2 of 2016.

2.1.7 Private Prosecution

Kenyan law permits private prosecution in limited circumstances where public authorities fail to act. Although exceptional and subject to strict legal thresholds, it may provide an important accountability mechanism in cases involving serious labour migration-related abuses, trafficking, or exploitation. The principal requirements are summarized in the text box below.

THRESHOLD REQUIREMENTS FOR PRIVATE PROSECUTION

- Matter reported to the police;
- ODPP informed of the complaint;
- ODPP declined prosecution or failed to act without reasonable justification; and
- Clear likelihood of failure of justice or a significant social evil likely to go unpunished.

Permission to proceed with a private prosecution ultimately remains subject to judicial discretion.

In practice, private prosecution presents substantial challenges for migrant workers and survivors of trafficking. Such proceedings may require significant financial resources, legal expertise, sustained access to evidence and witnesses, and the ability to manage complex criminal litigation independently of State prosecutorial structures. For survivors already facing economic hardship, trauma, insecurity, or limited legal support, this may render private prosecution difficult to pursue in practice.

Although private prosecution remains exceptional, it may be more realistic in the circumstances summarized in the text box below.

SITUATIONS IN WHICH PRIVATE PROSECUTION MAY BE MOST VIABLE

- Particularly well-documented cases;
- Cases involving strong corroborative evidence;
- Situations where public authorities have clearly failed to act;
- Strategic litigation efforts supported by civil society organizations; or
- Cases receiving pro bono or institutional legal assistance.

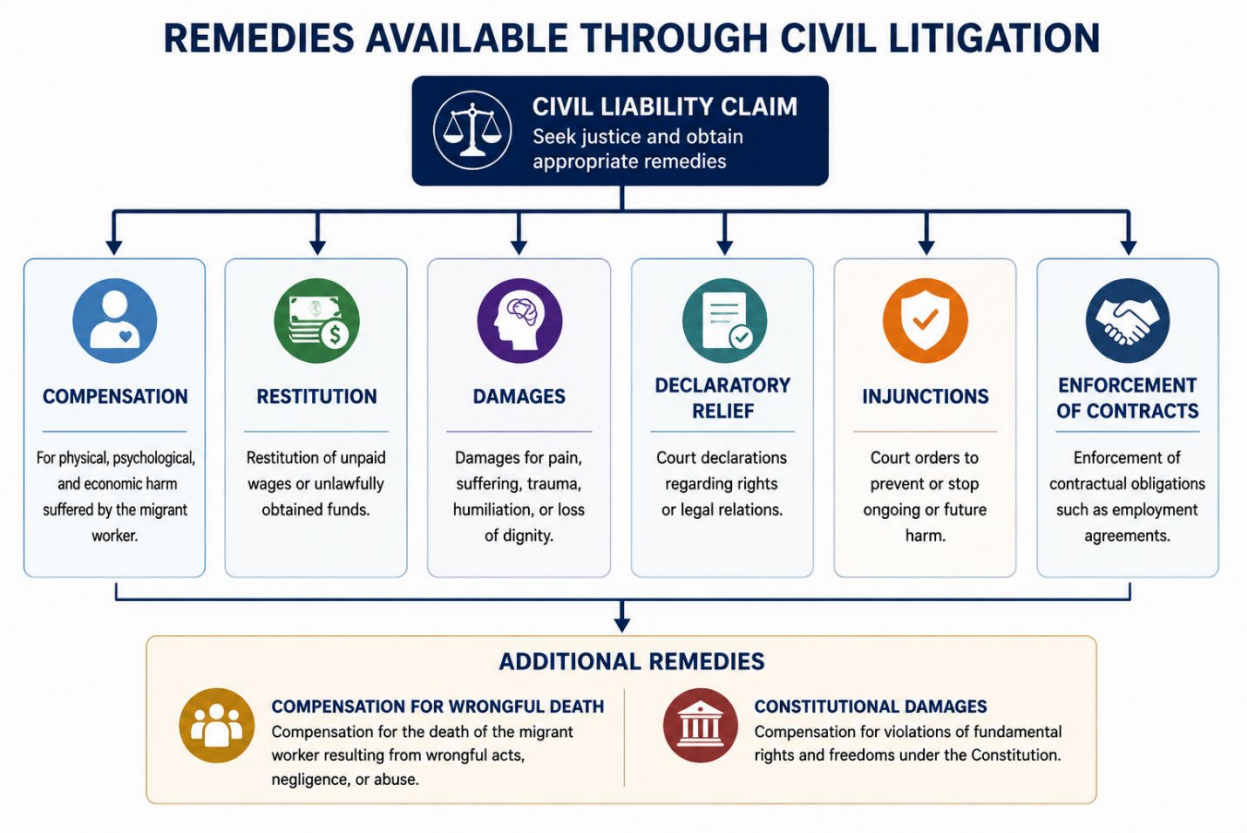
Although rarely used, the possibility of private prosecution remains important within the broader access to justice framework because it provides an additional accountability avenue where serious exploitation or trafficking offences might otherwise remain unaddressed.

2.2 Civil Liability

In addition to criminal accountability, migrant workers and their families may pursue civil liability claims against recruitment agencies and other actors involved in facilitating migration and overseas employment, including brokers, intermediaries, employers, medical service providers,

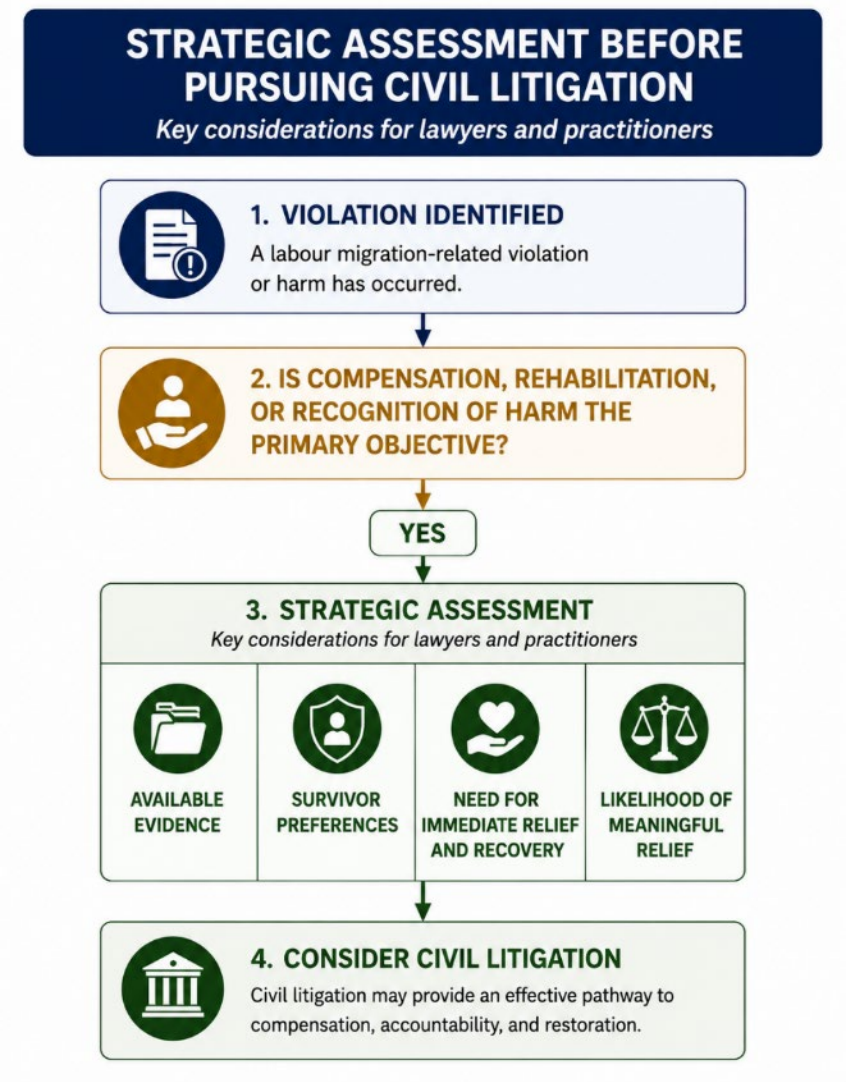
and, in certain circumstances, public officials or institutions whose acts or omissions contributed to the harm suffered. Civil proceedings constitute one of the principal judicial avenues through which migrant workers may obtain direct compensation and individualized remedies for abuses connected to labour migration.

Unlike criminal proceedings, which primarily focus on punishment and public accountability, civil claims are principally aimed at repairing harm suffered by the victim, giving rise to a broad range of remedies aimed at repairing harm, restoring rights, and providing practical relief to affected migrant workers and their families. The principal remedies available through civil proceedings are illustrated in the figure below.



Civil litigation may additionally contribute to recognition of harm, restoration of dignity, and deterrence of abusive migration and recruitment practices.

Importantly, civil claims may proceed independently of criminal investigations or prosecutions. Migrant workers are therefore not required to wait for criminal proceedings before seeking compensation or other forms of relief. In many labour migration cases, civil litigation may provide a more effective or survivor-centred pathway to remedy, particularly where compensation, rehabilitation, or recognition of harm are the primary objectives. Whether civil proceedings constitute the most appropriate strategy will depend on the circumstances of the case, the survivor's objectives, and the available evidence. Key considerations are illustrated in the figure below.



In Kenya, employment and labour-related disputes involving migrant workers are generally filed before the Employment and Labour Relations Court ("ELRC"), a specialized superior court with authority to grant compensation, injunctions, declarations, constitutional remedies, and enforcement orders.

A significant advantage of civil proceedings is the lower evidentiary threshold applicable in comparison to criminal litigation. Whereas criminal liability must be established beyond reasonable doubt, civil liability is generally determined on a balance of probabilities. This means the claimant must establish that it is more likely than not that the violations occurred and that the defendant bears legal responsibility for the resulting harm. Other main differences between Criminal and Civil Proceedings are illustrated in the table below.

Criminal and Civil Proceedings Compared	
Criminal Proceedings	**Civil Proceedings**
Purpose: Punishment and accountability	Purpose: Compensation and remedy
Standard: Beyond reasonable doubt	Standard: Balance of probabilities
Led by State/ODPP	Led by claimant
Criminal sanctions	Compensation and damages
Public interest focus	Victim-centred focus
Survivor has limited control	Survivor retains greater control

Civil litigation may also provide a more accessible avenue in labour migration-related cases where abuses occurred abroad, investigations are incomplete, perpetrators cannot easily be criminally prosecuted, or the available evidence may be insufficient to sustain criminal conviction.

Although civil proceedings may still require testimony and documentary evidence, the practical burden on survivors is often comparatively lower than in criminal proceedings. Key features that may make civil litigation more accessible or survivor-centred are summarized in the text box below.

FACTORS THAT MAY REDUCE THE PRACTICAL BURDEN ON SURVIVORS

- Less intensive cross-examination;
- Fewer procedural demands;
- Reduced exposure to adversarial questioning; and
- Greater flexibility regarding settlement discussions and litigation strategy.

This may be particularly important in cases involving trafficking survivors, women migrant domestic workers, or survivors of gender-based violence ("GBV"), where repeated questioning and prolonged criminal proceedings may contribute to retraumatization.

Nevertheless, civil litigation involving migrant workers may still present evidentiary challenges and, for this reason, early documentation and preservation of evidence remain essential even where criminal proceedings are not pursued.

2.2.1 Constitutional Claims

Labour migration-related abuses frequently engage multiple constitutional rights simultaneously. Depending on the facts of the case, migrant workers may invoke a range of rights protected under the Constitution of Kenya.

Constitutional Rights Commonly Invoked in Migrant Worker Cases	
Right	**Constitution**
Dignity	Article 28
Freedom and Security of the Person	Article 29
Freedom from Slavery, Servitude and Forced Labour	Article 30
Freedom of Movement	Article 39
Access to Justice	Article 48

Constitutional petitions present advantages in labour migration-related litigation, since they are generally not subject to statutory limitation periods, may be brought individually or representatively, and do not necessarily require proof of actual financial loss. Courts may therefore award constitutional damages based solely upon proof of rights violations.

Kenyan courts have increasingly recognized the severe human rights dimensions of labour migration abuses. In *Ann v Attorney General*, the High Court affirmed that the constitutional right to dignity includes protection from humiliation and degrading treatment.[63] Similarly, in *Kifano* supra, the Employment and Labour Relations Court found violations of Article 30 where the migrant worker was subjected to coercive and abusive labour conditions abroad.[64]

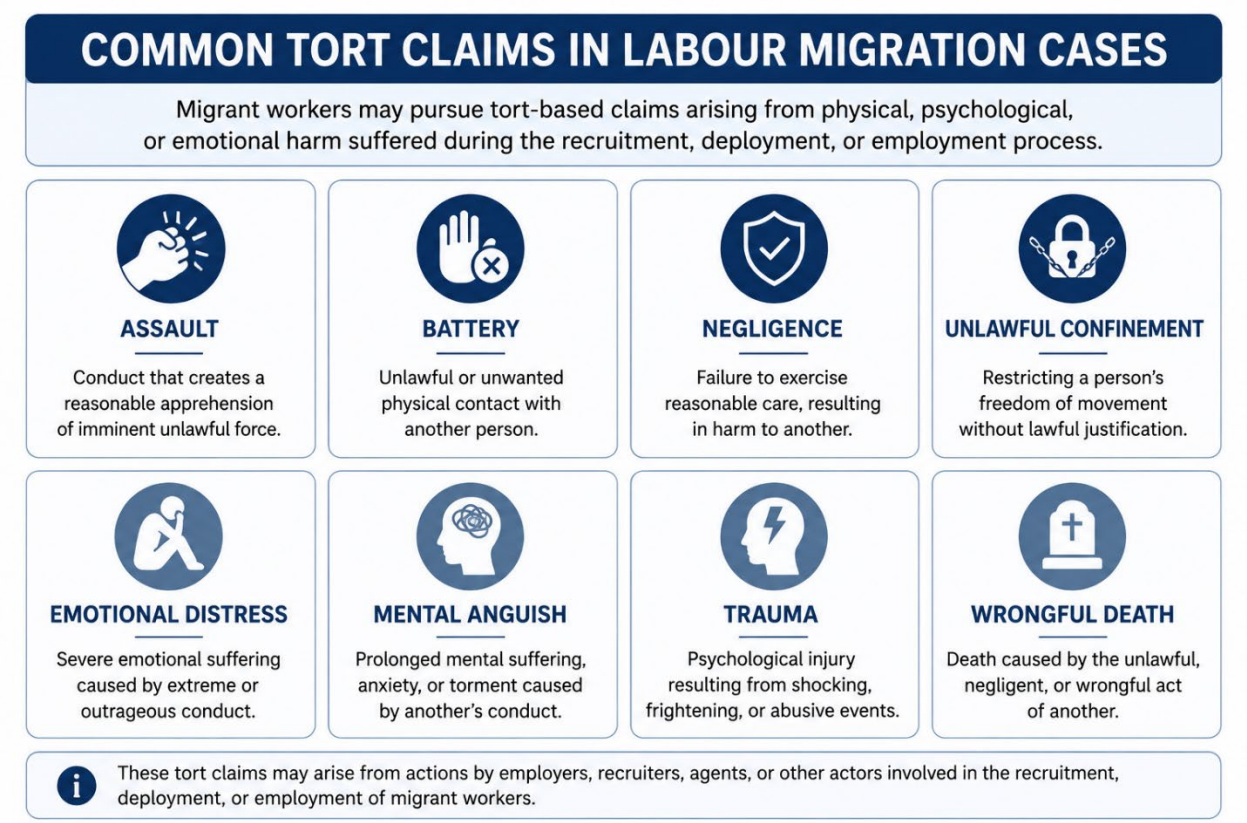
The decision in *Nyakong'o v Gratify Solutions International Limited* further strengthened this jurisprudence. The Court held that the petitioner had been subjected to trafficking, servitude, forced labour, degrading treatment, and unlawful restriction of movement after being deceptively recruited for overseas employment and trafficked into Myanmar.[65] The Court emphasized that deception invalidated any purported consent and held the respondents liable despite the exploitation ultimately occurring outside Kenya. The Court awarded KES 5,000,000 in damages

[63] *A.N.N. v. Attorney General* (Petition 240 of 2012) [2013] eKLR.
[64] n60.
[65] *Nyakong'o v Gratify Solutions International Limited & 3 others; National Employment Authority (Interested Party)* [2025] KEELRC 3258 (KLR) (20 November 2025).

for violation of constitutional rights and issued a permanent injunction restraining the respondents from engaging in similar recruitment and deployment activities in the future.

2.2.2 Tort Claims

A single labour migration-related incident may simultaneously give rise to constitutional, contractual, statutory, and tort-based causes of action. Migrant workers may pursue tort-based claims arising from physical, psychological, or emotional harm suffered during the recruitment, deployment, or employment process.



Battery generally refers to unlawful or unwanted physical contact, while assault concerns conduct causing a person to reasonably fear imminent unlawful force. Claims involving mental anguish, emotional distress, or psychological trauma may arise where conduct is extreme, coercive, degrading, or foreseeably harmful.

The factual findings in *Nyakong'o* illustrate the relevance of tort principles within labour migration litigation. The Court accepted evidence that the petitioner had been subjected to:

- Physical abuse;
- Intimidation;
- Confinement;
- Forced criminal labour;
- Denial of food; and
- Severe psychological coercion while held in captivity in Myanmar.

Similarly, in *Mwangi v Kiambu County Government*, the Court emphasized that in negligence-based psychological injury claims it is important to establish:

- Duty of care;
- Breach;
- Causation; and
- Resulting harm.

These principles may become particularly relevant where actors facilitating migration and overseas placement fail to exercise reasonable diligence, misrepresent employment conditions, or expose migrant workers to foreseeable harm abroad.

Where migrant workers die as a result of trafficking, abuse, exploitation, unsafe labour conditions, medical neglect, or other migration-related harms abroad, civil claims may additionally be pursued:

- under the **Law Reform Act**, on behalf of the deceased's estate; or[66]
- under the **Fatal Accidents Act**, on behalf of dependants.[67]

These forms of civil liability are particularly important in labour migration cases because many migrant workers serve as the primary or sole breadwinners for their families. In practice, the death of a migrant worker abroad frequently produces not only profound emotional and psychological harm, but also severe economic consequences for dependants who relied upon the deceased's income for housing, education, food, healthcare, childcare, and general family support.

Claims under the Law Reform Act are generally brought on behalf of the deceased's estate and may include damages relating to:

- pain and suffering prior to death;
- loss of expectation of life; and
- losses incurred by the estate itself.

By contrast, claims under the Fatal Accidents Act are intended to compensate dependants for the financial and material support they reasonably expected to continue receiving from the deceased. Such claims may therefore include compensation for:

- loss of dependency;
- funeral and repatriation expenses;
- loss of financial support;
- and other consequential losses suffered by surviving family members.

[66] Kenya Law Reform Commission Act, 2013.
[67] Fatal Accidents Act 1946 (Cap 32).

In labour migration-related cases, these claims may become especially significant where:

- the deceased migrant worker regularly remitted income to Kenya;
- children depended upon the worker for school fees and maintenance;
- elderly parents relied upon remittances for survival;
- or the family incurred substantial debts connected to recruitment fees, migration loans, medical expenses, or repatriation costs.

The transnational nature of migrant worker deaths may, however, create important evidentiary and procedural challenges.

COMMON EVIDENTIARY CHALLENGES IN OVERSEAS DEATH CASES

- Death certificates issued abroad;
- Medical or autopsy reports;
- Employment records;
- Evidence concerning the circumstances of death;
- Witness statements from destination countries; or
- Documentation demonstrating negligence, abuse, trafficking, or unsafe working conditions.

In some cases, the body may not be promptly repatriated, information concerning the death may be incomplete or contradictory, or employers and intermediaries may attempt to conceal the true circumstances surrounding the death. Early documentation, preservation of communications, cooperation with consular authorities, and collection of financial remittance records may therefore become particularly important in establishing both liability and dependency claims.

Ultimately, where evidence demonstrates that actors facilitating migration and overseas employment contributed to foreseeable harm through deception, unlawful deployment, failure to comply with statutory safeguards, trafficking-related conduct, or negligent recruitment practices, civil liability may potentially extend beyond the foreign employer to locally identifiable actors operating within Kenya.

2.2.3 Contractual Claims

Contractual claims arise where migrant workers suffer harm resulting from breach of obligations connected to overseas employment arrangements. Such claims may be pursued against recruitment agencies and other actors facilitating migration and placement abroad where they fail to comply with agreed contractual terms or statutory obligations incorporated into the employment relationship.

A foreign contract of service constitutes one of the principal legal bases upon which contractual claims may be brought in labour migration litigation. Under Kenyan law, overseas employment arrangements are required to comply with statutory safeguards governing recruitment and

deployment abroad, including the requirement that foreign employment contracts be reduced into writing and comply with the Employment Act and the Employment (General) Rules.

Contractual claims may arise from a wide range of recruitment and employment-related breaches. Common contractual disputes encountered in labour migration litigation are summarized in the figure below.



The Employment and Labour Relations Court ("ELRC") will generally examine the terms of the foreign contract of service, recruitment representations, and related documentation to determine:

- whether a valid contractual relationship existed;
- whether statutory obligations were complied with;
- whether contractual terms were breached; and
- whether damages resulted from the breach.

Importantly, contractual liability in labour migration cases does not arise only from the contents of the written contract itself. The absence of mandatory contractual safeguards may itself constitute evidence of illegality, negligence, or non-compliance capable of grounding independent claims.

This principle emerged clearly in *Kifano,* where the Court emphasized that the respondents failed to produce:

- a written foreign contract of employment;
- evidence of a security bond under Section 85 of the Employment Act;
- or evidence demonstrating lawful registration and compliance as an employment agency.

The Court held that the omission to comply with statutory requirements governing overseas recruitment and deployment exposed the petitioner to exploitation and demonstrated failure by the respondents to discharge their legal obligations.

Accordingly, in labour migration litigation:

- the existence of a compliant foreign contract of service may form the basis of a contractual claim where contractual obligations are breached; while
- the absence of key statutory documents may itself support liability by evidencing unlawful recruitment, negligent deployment, or failure to comply with mandatory protections established under Kenyan law.

In *Kifano*[68], despite the absence of a written foreign contract, the Court relied on surrounding evidence, including communications, travel arrangements, deployment evidence, and recruitment conduct, to establish the relationship between the parties and the respondents' control over the petitioner's overseas employment.[69]

Similarly, in *Nyakong'o* the Court found that the purported overseas employment arrangement was fraudulent and deceptive. The petitioner had been promised lawful employment in Thailand but was ultimately trafficked into Myanmar and forced into exploitative criminal labour. The Court consequently declined to award the promised salary because the alleged contract itself arose from an unlawful and fraudulent arrangement.[70]

Kenyan courts nevertheless maintain that courts cannot freely rewrite contracts entered into by parties, and general damages are ordinarily not awardable for breach of contract alone. Consequently, contractual claims generally require proof of identifiable losses or special damages directly resulting from the breach.

[68] n60.
[69] n60.
[70] n73.

ELEMENTS THAT COURTS CLOSELY SCRUTINIZE IN CONTRACTUAL CLAIMS

- The legality of foreign recruitment arrangements;
- Compliance with statutory safeguards;
- Authenticity of contractual documentation; and
- The conduct of actors facilitating migration and deployment abroad.

Because contractual claims often depend upon documentary evidence demonstrating both the existence of contractual obligations and the losses resulting from their breach, early preservation of key records is essential. Documents that practitioners should seek to obtain and preserve are summarized in the text box below.

KEY DOCUMENTS FOR CONTRACTUAL CLAIMS

- Payment receipts;
- Recruitment communications;
- Salary records;
- Remittance evidence; and
- Deployment documentation.

2.2.4 Recent Judicial Developments in Labour Migration Litigation

Recent decisions of the Employment and Labour Relations Court demonstrate that Kenyan courts can recognize labour migration-related abuses as serious human rights violations capable of attracting substantial civil liability. Collectively, they demonstrate an emerging trend toward survivor-centred and rights-based approaches within Kenyan labour migration litigation.

IMPORTANT DEVELOPMENTS EMERGING FROM RECENT ELRC CASES

- Courts are increasingly recognizing deceptive recruitment and exploitative deployment schemes as trafficking in persons;
- Liability may attach even where exploitation occurs outside Kenya;
- Actors facilitating migration may remain liable as part of an "unbroken chain of causation" leading to exploitation abroad;
- Courts are increasingly willing to award substantial constitutional damages;
- Electronic evidence, including WhatsApp communications and digital records, may constitute admissible evidence where properly authenticated; and
- Courts may issue injunctive relief restraining future recruitment or deployment activities.

In *Kifano v Loivin*, the Court confirmed that actors facilitating migration and overseas placement may incur liability where they participate in recruitment, transportation, harbouring, deception, or

deployment processes that expose migrant workers to exploitation abroad.[71]The later decision in *Nyakong'o v Gratify Solutions International Limited & 3 others* significantly expanded this jurisprudence by expressly linking constitutional protections, trafficking principles, and civil liability within the labour migration context.[72]

2.2.5 Security Bond Claims

Section 85 of the Employment Act requires security bonds in connection with overseas employment arrangements involving foreign employers. These bonds are intended to provide an additional safeguard for migrant workers deployed abroad and may potentially function as a source of compensation where violations occur.[73] The National Employment Authority ("NEA") requires compliance with security bond obligations, although enforcement in practice remains inconsistent.

PRACTITIONER NOTE: SECURITY BONDS MAY NOT GUARANTEE FULL RECOVERY

- May not exist despite statutory requirements;
- May be inadequate; or
- the secured amount may prove insufficient to cover the full extent of damages suffered.

The decision in *Kifano v Loivin* reinforced the importance of compliance with statutory safeguards governing overseas deployment and emphasized that failure to comply with Section 85 exposed migrant workers to exploitation[74].

Future litigation may clarify the extent to which migrant workers may directly invoke security bonds as a source of compensation and the circumstances under which public authorities may bear responsibility for failures in supervision or enforcement.

2.2.6 Mareva Injunctions (Freezing Orders)

Mareva injunctions are freezing orders issued under Orders 39 and 40 of the Civil Procedure Rules, 2010 to prevent defendants from dissipating or concealing assets in a manner that would frustrate enforcement of future judgments. In labour migration litigation, freezing orders may become useful where there is evidence that defendants are attempting to:

- transfer assets;
- conceal funds;
- dissipate property; or
- frustrate anticipated compensation claims.

[71] n60.
[72] n73.
[73] n28.
[74] n60.

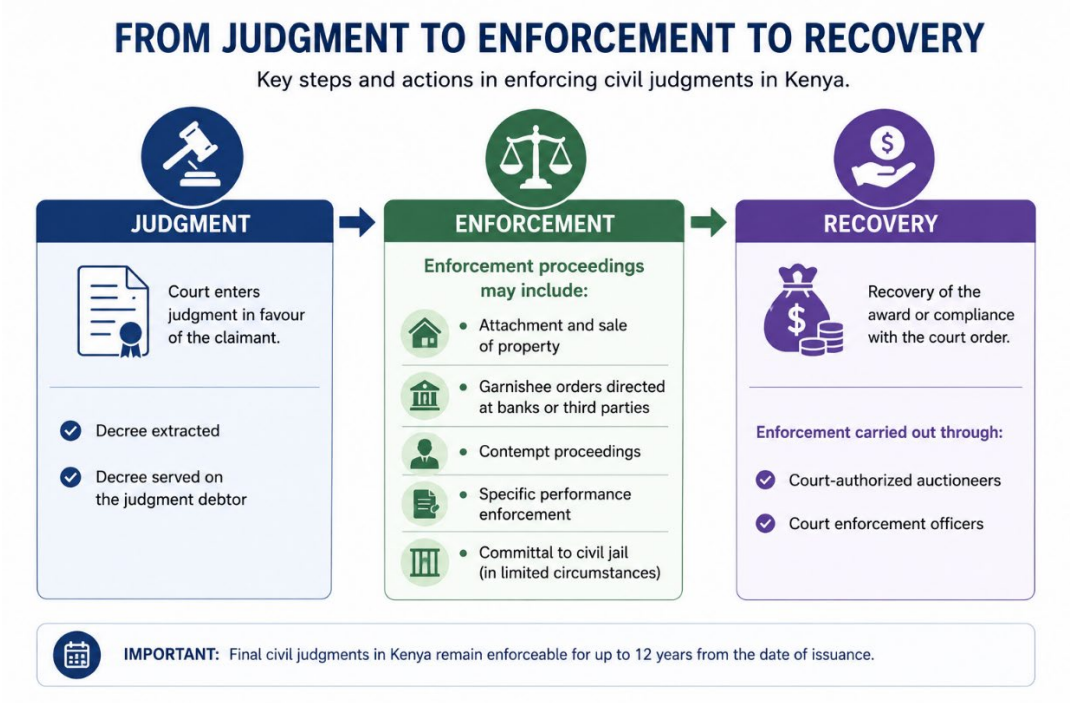
In *International Air Transport Association v Akarim Agencies Company Limited*, the Court outlined the principal conditions for granting Mareva injunctions.[75]

MAIN CONDITIONS FOR MAREVA INJUNCTIONS
• Existence of a good arguable case; • Jurisdiction over the defendant or assets; • Existence of assets within reach of the court; and • Real risk of dissipation.

Because freezing orders are discretionary and subject to a high threshold, courts generally require strong and convincing evidence demonstrating genuine risk that assets may be concealed or dissipated before judgment can be enforced.

2.2.7 Enforcement of Civil Judgments

The effectiveness of civil litigation ultimately depends upon the ability to enforce judgments successfully. Enforcement of civil judgments in Kenya is governed principally by the Civil Procedure Act and the Civil Procedure Rules, 2010.[76]



Importantly, final civil judgments in Kenya remain enforceable for up to twelve years from the date of issuance.

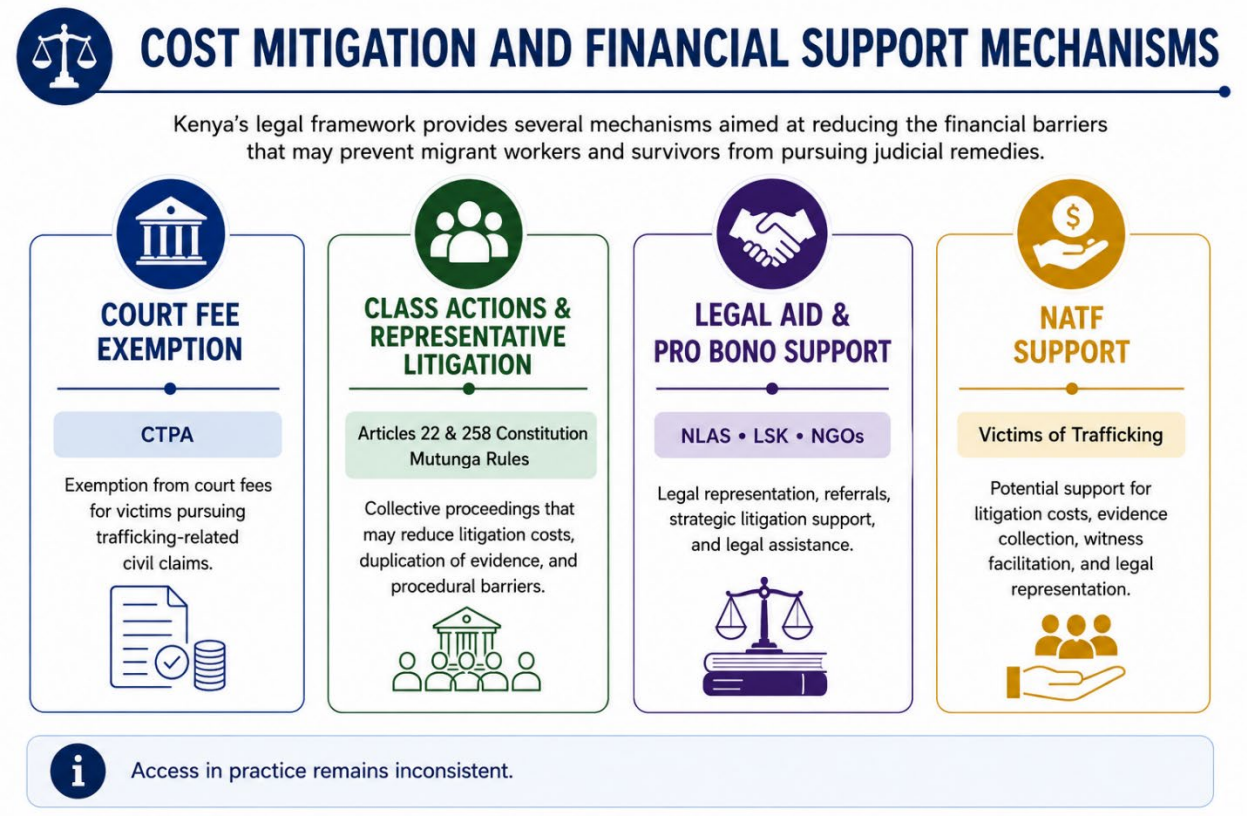
[75] *International Air Transport Association & another v Akarim Agencies Company Limited & 2 others [2014] eKLR*
[76] Civil Procedure Act, 2010.

2.3 Cost Mitigation Measures and Financial Support Mechanisms

Access to judicial remedies is significantly constrained by the financial realities faced by migrant workers and their families. Survivors of trafficking, forced labour, exploitation, or abusive recruitment practices frequently return to Kenya in situations of extreme economic vulnerability. In many cases, migrant workers have incurred substantial recruitment-related expenses, lost their income abroad, or returned without wages or compensation. Families of deceased migrant workers may also face severe financial hardship following the loss of the household breadwinner.

As a result, the ability to pursue judicial remedies is frequently dependent upon the practical availability of mechanisms capable of reducing the economic barriers associated with litigation. Cost mitigation measures therefore form an important component of access to justice and may themselves operate as a form of remedy by enabling survivors to meaningfully participate in judicial processes. International human rights standards recognize that effective remedies must be accessible in practice and that States may be required to provide legal assistance where the interests of justice so require. The right to an effective remedy extends beyond formal recognition of rights and includes measures enabling victims to pursue claims without being prevented by financial barriers.

Kenya's legal framework provides several mechanisms aimed at reducing the financial burden associated with labour migration litigation. They are illustrated in the figure below.



It must be noted that, despite the existence of these mechanisms, questions remain regarding their accessibility, operational effectiveness, and practical utilization in labour migration cases.

2.3.1 Exemption of Court Fees in Trafficking-Related Claims

Victims of trafficking in persons are exempted from payment of court fees when instituting civil claims for damages arising from trafficking-related violations. This exemption is provided under Section 16 of the Counter-Trafficking in Persons Act, 2010 ("CTPA"), which allows victims of trafficking to institute civil proceedings for compensation and damages arising from acts of trafficking.[77]

The exemption constitutes an important procedural safeguard because litigation costs frequently operate as a major barrier preventing survivors from pursuing remedies. It reflects recognition within the trafficking framework that victims should not be further disadvantaged financially when seeking accountability and compensation from those responsible for their exploitation.

Practitioners may seek to invoke this exemption where a migrant worker is a victim of trafficking in persons, including in cases involving forced labour, deceptive recruitment, domestic servitude, sexual exploitation, unlawful confinement, or other forms of cross-border exploitation connected to labour migration.

Despite the importance of this safeguard, there appears to be no publicly available jurisprudence or documented precedent demonstrating consistent practical application of the court-fee waiver in trafficking-related civil litigation. The absence of reported cases relying upon this exemption may suggest either limited awareness, underutilization, or broader barriers preventing survivors from initiating civil claims despite the statutory protection.

2.3.2 Class Actions, Representative Litigation, and the Mutunga Rules

Constitutional petitions in Kenya may be brought as representative or class actions under Articles 22 and 258 of the Constitution. These provisions also establish broad standing rules, identifying the individuals, groups, and entities entitled to institute constitutional proceedings.[78]

WHO MAY INSTITUTE CONSTITUTIONAL PROCEEDINGS?

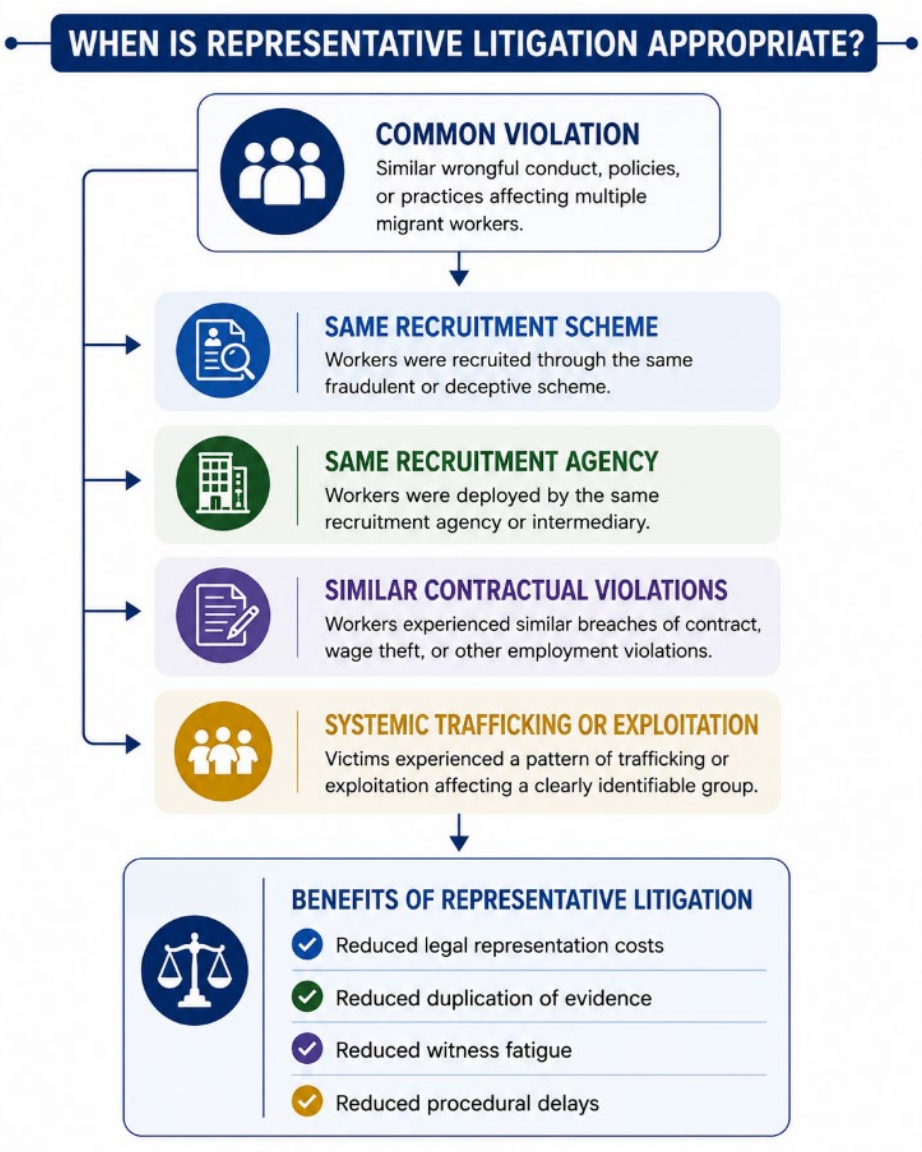
- An individual on their own behalf;
- An individual on behalf of another person unable to act in their own name;
- A person acting in the interest of a group, class of persons, or public interest.
- An association acting in the interest of its members.

[77] n33, s16.
[78] n17, art 22 and 258.

This framework is operationalized through the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 ("Mutunga Rules"), which recognize both natural and juristic persons, including NGOs and civil society organizations, as proper claimants in constitutional litigation.

Additionally, Order 1 Rule 8 of the Civil Procedure Rules permits representative suits and consolidation of claims arising from common facts or related violations.

These mechanisms may significantly reduce litigation costs by allowing multiple claimants to pursue proceedings collectively rather than filing separate actions, as illustrated in the figure below.



The participation of NGOs and public interest litigants may further strengthen survivors' ability to access judicial remedies where individual victims lack financial or institutional capacity to pursue litigation independently.

However, Kenyan courts impose important limitations on class and representative proceedings. Courts generally require:

- a clearly identifiable class;
- common questions of law or fact;
- and sufficiently similar circumstances among claimants.

In *Andrew Muma and Charles Kanjama t/a Muma & Kanjama Advocates & others v Deloitte & Touche East Africa & 5 others [2020] KEHC 10059 (KLR)*, the Court emphasized that excessively broad or individualized class actions may undermine procedural efficiency and fairness.[79] Accordingly, representative litigation tends to function most effectively where violations arise from systematic and substantially similar conduct rather than highly individualized factual circumstances.

2.3.3 Legal Aid and Pro Bono Representation

Section 29 of the Legal Aid Act establishes a Legal Aid Fund intended to support access to justice through:[80]

- payment of legal representation costs;
- remuneration of legal aid providers;
- and operational support for the National Legal Aid Service ("NLAS").

NLAS functions as the principal institution responsible for coordinating and regulating legal aid services in Kenya. Migrant workers seeking legal assistance may apply for support through NLAS, although approval remains subject to eligibility requirements and availability of resources.

In practice, NLAS continues to face operational and capacity limitations, and access to legal aid remains inconsistent.

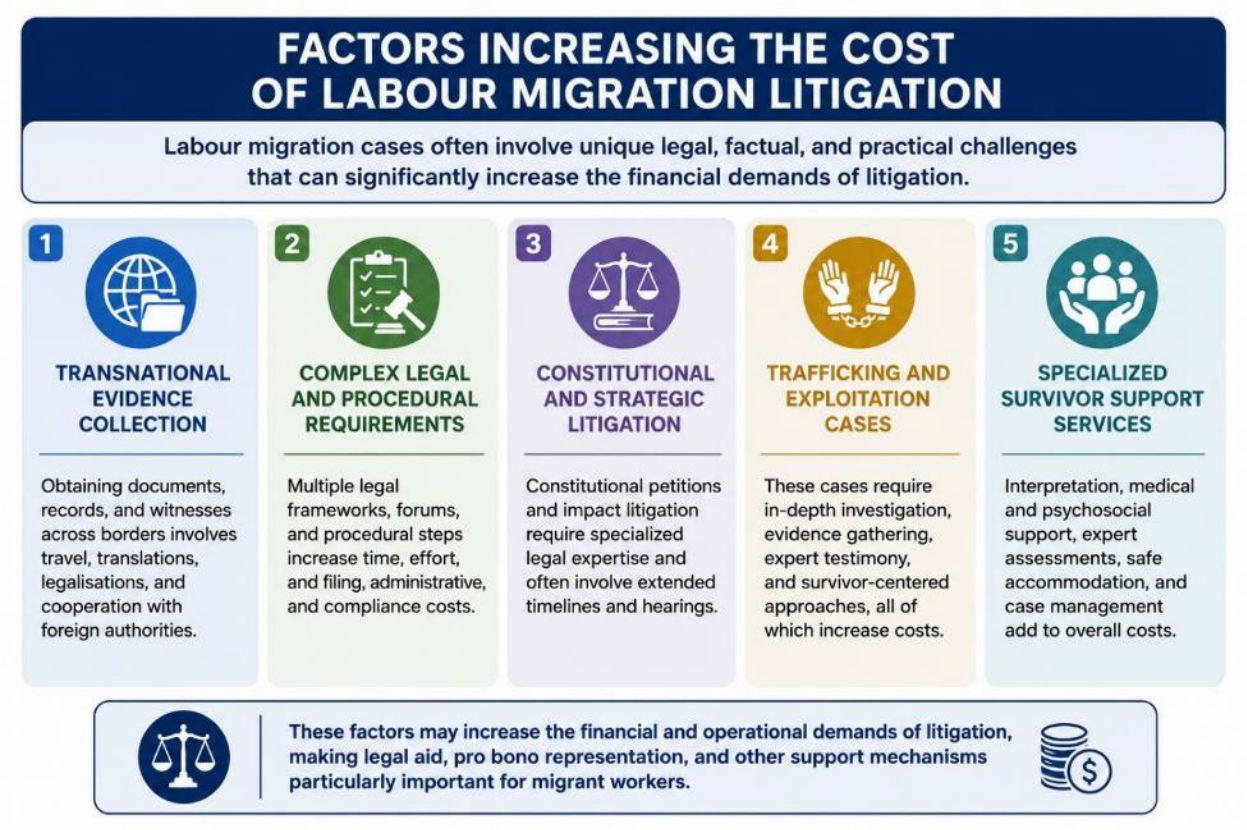
DO NOT ASSUME LEGAL AID IS AUTOMATICALLY AVAILABLE

- Access to legal aid remains subject to eligibility requirements and resource availability.
- Availability may vary depending on geographical location, institutional capacity, and the complexity of the claim.
- Practitioners should assess alternative sources of representation.

[79] *Andrew Muma and Charles Kanjama t/a Muma & Kanjama Advocates & others v Deloitte & Touche East Africa & 5 others [2020] KEHC 10059 (KLR).*
[80] Legal Aid Act 2016 (No 6 of 2016) s 29.

The Law Society of Kenya ("LSK") additionally plays an important role in facilitating subsidized or pro bono legal representation through its advocates and public interest initiatives. Civil society organizations and NGOs working on trafficking, migrant rights, labour rights, and gender-based violence also frequently provide legal assistance, referrals, strategic litigation support, psychosocial accompaniment, and evidentiary documentation.

Within labour migration cases, legal aid may be particularly important because the cost and complexity of litigation can directly affect a migrant worker's ability to pursue remedies and navigate judicial processes, as illustrated below.



2.3.4 National Assistance Trust Fund for Victims of Trafficking in Persons

The National Assistance Trust Fund ("NATF") provides a potential mechanism for financing legal assistance and litigation support for victims of trafficking in persons. Although the Fund also supports broader victim assistance measures, this section focuses specifically upon its relevance to access to justice and legal remedies.

The National Assistance Trust Fund (NATF) is financed through parliamentary allocations, confiscated proceeds of crime, investment income, and donations or grants[81]. Although Kenya's

[81] Counter-Trafficking in Persons Act 2010, s23.

legal framework permits the forfeiture of assets and proceeds derived from trafficking offences for the benefit of statutory funds, including the NATF, operationalization and sustainable financing of victim assistance mechanisms remain challenging, and the practical linkage between recovered assets and direct support for trafficking victims appears limited in practice. Addressing these gaps may require strategic litigation, policy advocacy, and strengthened implementation of existing forfeiture and asset recovery frameworks.

Within the context of labour migration litigation, the Fund may, subject to applicable regulations, available resources, and administrative approval procedures, potentially support "legal assistance or legal information, including information on the relevant judicial and administrative proceedings".[82]

POTENTIAL USES OF NATF SUPPORT FOR LEGAL REPRESENTATION AND LITIGATION

- Legal representation;
- Litigation-related expenses;
- Evidentiary collection;
- Witness facilitation; and
- Other costs associated with pursuing judicial remedies.

This mechanism may be particularly important where survivors of trafficking in person lack financial resources to pursue strategic litigation, especially in complex cross-border exploitation cases requiring extensive documentation and representation.

Importantly, the NATF framework has been accompanied by the development of a National Costing Model intended to estimate the financial requirements associated with victim support and assistance. However, the costing framework appears to raise significant practical concerns regarding the adequacy and realism of the projected allocations.

The cost estimations appear to substantially underestimate the actual expenses associated with legal representation and strategic litigation in labour migration and trafficking cases. Additionally, the geographical distribution of projected legal service costs appears inconsistent with practical realities. Notably, the model reportedly identifies Nairobi as among the least expensive locations for legal service provision, despite Nairobi functioning as the country's principal legal and judicial hub where litigation costs are often comparatively higher.

These inconsistencies may suggest that the costing framework has either not been fully validated in practice or may not accurately reflect the actual financial requirements associated with complex trafficking and labour migration litigation.

[82] Counter-Trafficking in Persons Act 2010, s15,ss1(g).

Notwithstanding these limitations, the NATF may still represent an important practical avenue for lawyers, NGOs, and legal aid providers seeking financial support for survivor-centred litigation. Applications submitted on behalf of victims may potentially assist in availing funds necessary to support strategic cases, particularly where survivors would otherwise be unable to sustain lengthy judicial proceedings.

In July 2024, Guidelines were launched to improve operationalization and accessibility of the NATF framework. Victims generally access the Fund through the Counter-Trafficking in Persons Secretariat, often with support from NGOs, legal practitioners, or civil society organizations assisting survivors throughout referral and application processes.[83]

2.3.5 Remaining Structural Challenges

Taken together, these cost mitigation and support mechanisms demonstrate that Kenya has developed multiple procedural and institutional frameworks intended to facilitate access to judicial remedies for victims of labour migration abuses, particularly within trafficking-related contexts.

However, it remains unclear how effectively or frequently these measures are utilized in practice. The effectiveness of these mechanisms depends not only upon their formal existence, but also upon their practical accessibility, implementation, and responsiveness to the realities faced by migrant workers and their families.

As a result, improving access to justice for migrant domestic workers requires not only formal legal remedies, but also sustained investment in survivor-centred legal aid systems, psychosocial assistance, financial empowerment, and institutional coordination capable of enabling survivors to meaningfully participate in justice processes.

2.4 Relevant Evidence and Witness Preparation

2.4.1 The Role of Evidence in Labour Migration Litigation

Evidence constitutes the foundation of labour migration litigation, yet it is often the most difficult element to secure. Migrant workers frequently lack formal documentation, and employment relationships may be governed by informal arrangements, verbal promises, or altered contracts.

Consequently, labour migration cases frequently require courts and practitioners to reconstruct employment relationships and patterns of exploitation through fragmented documentary evidence, electronic communications, witness testimony, and circumstantial indicators. Important records may be controlled by third parties, lost, withheld, or otherwise become inaccessible. Common evidentiary challenges are summarized in the text box below.

[83] Ministry of Labour and Social Protection, *Trust Fund Guidelines For Assisting Victims Of Trafficking In Persons*, 2023.

PRACTITIONER WARNING: COMMON EVIDENCE CHALLENGES IN LABOUR MIGRATION CASES

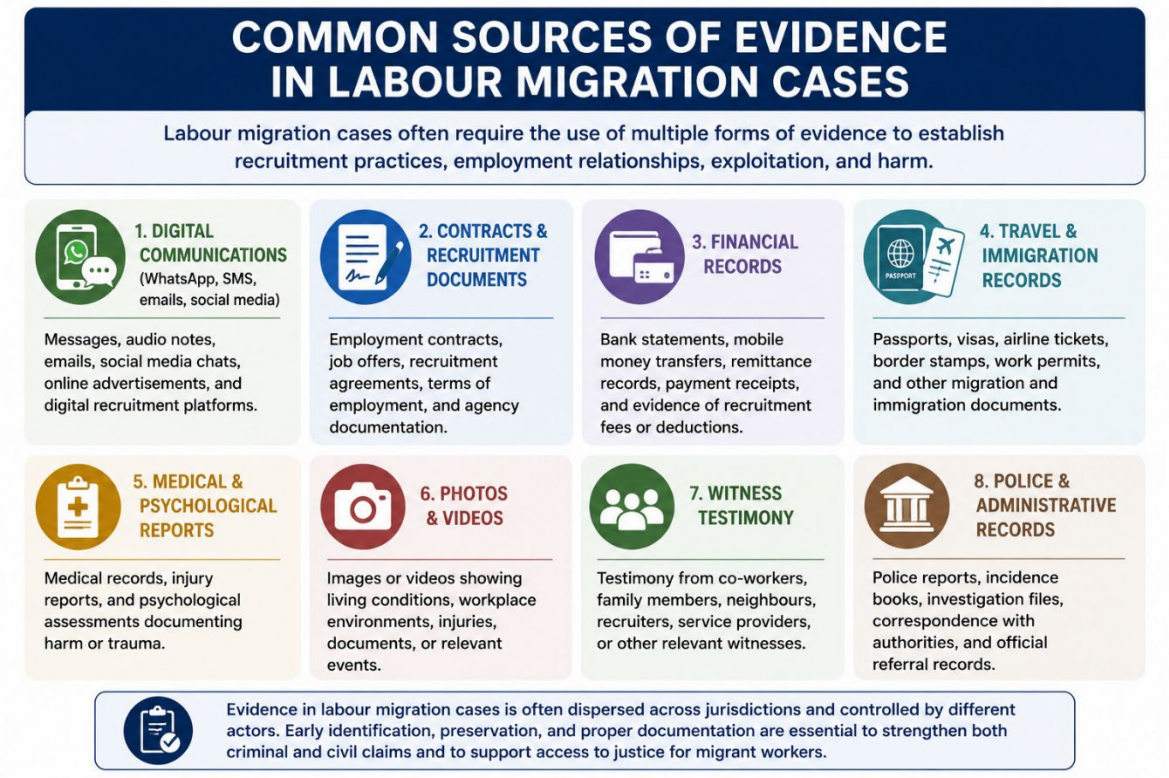
Evidence may be controlled by:

- Recruitment agencies and intermediaries;
- Foreign employers;
- Immigration authorities;
- Labour agencies;
- Financial institutions; and
- Telecommunications providers.

Evidence may be lost where:

- Passports or mobile phones are confiscated;
- Communications are deleted;
- Contracts are withheld or substituted; or
- Workers are prevented from maintaining personal records.

Accordingly, early documentation and preservation of evidence are critical in strengthening both criminal and civil claims connected to labour migration-related abuses. Labour migration litigation frequently relies upon multiple forms of documentary, digital, financial, and testimonial evidence. Common sources of evidence encountered in practice are summarized in the figure below.



2.4.2 Evidentiary and Documentation Considerations During Investigations

In criminal proceedings, at the reporting and investigation stage, advocates should encourage the early preservation of all potentially relevant evidence. This is critical because trafficking and exploitation cases frequently rely heavily upon survivor testimony, while documentary evidence may be incomplete, confiscated, controlled by perpetrators or located abroad.

Despite investigations are led by law enforcement, practitioners can play a critical role by helping survivors identify, document, and preserve relevant information before it is lost, altered, or destroyed. Key considerations are summarized in the text box below.

Practitioner Checklist: Early Evidence Preservation Considerations

✓ Identifying potential witnesses;
✓ Ensuring consistency of witness accounts;
✓ Securing documentary evidence;
✓ Preserving electronic communications and digital records;
✓ Identifying potential corroborative evidence;
✓ Considering chain of custody requirements;
✓ Anticipating translation and interpretation needs; and
✓ Assessing accessibility and accommodation requirements for survivors.

Although practitioners do not conduct criminal investigations themselves, familiarity with the principal stages of trafficking investigations and prosecutions can significantly enhance their ability to support survivors throughout the criminal justice process, thereby protecting victims' rights, preserving and documenting evidence, facilitating timely referrals, supporting cooperation with investigative authorities, managing survivor expectations, and preparing victims and witnesses for participation in criminal proceedings. It can also help practitioners identify opportunities to access protection measures, victim assistance services, and other forms of support available during the course of an investigation.

These processes are governed by the Standard Operating Procedures ("SOPs") for Investigating and Prosecuting Cases of Trafficking in Persons in Kenya, developed jointly by the Directorate of Criminal Investigations ("DCI"), the Office of the Director of Public Prosecutions ("ODPP"), and the Counter-Trafficking in Persons Secretariat ("CTIP Secretariat") [84]. The figure below provides

[84] Ministry of Labour and Social Protection, *Standard Operating Procedures for Investigating and Prosecuting Trafficking in Persons in Kenya*, 2023.

a simplified overview of the stages through which trafficking cases typically progress from identification and protection to investigation and prosecution.



2.4.3 Electronic Evidence and Digital Communications

The admissibility and treatment of evidence in Kenya is principally governed by the Evidence Act[85], which recognizes both traditional and electronic forms of evidence. In labour migration disputes, electronic evidence often plays a particularly significant role because recruitment and deployment processes are commonly facilitated through WhatsApp communications, emails, social media messaging, mobile money transfers, online advertisements, and other digital recruitment platforms. These forms of communication may constitute the primary evidentiary record of recruitment arrangements, contractual representations, payment requests, threats, coercion, or instructions issued by recruiters and intermediaries.

The growing importance of electronic evidence was reaffirmed in *Nyakong'o v Gratify Solutions International Limited & 3 others*, where the Court relied extensively upon digital communications and electronic records after finding compliance with Sections 106A and 106B of the Evidence Act concerning authentication of electronic evidence.[86]

Similarly, in *Kifano v Loivin Limited & 4 others*, the Court relied upon emails, text message communications, travel records, recruitment communications, and evidence of financial demands connected to repatriation in order to establish the relationship between the parties and the respondents' control over the petitioner's overseas deployment and employment.[87]

Financial transaction records may also play a critical role in labour migration litigation. Mobile money transfers, bank records, recruitment payments, and remittances may assist in establishing:

- recruitment fees;
- unlawful charges;
- wage payments or non-payment;
- dependency claims; and
- broader patterns of financial exploitation.

Given the central role played by digital communications in labour migration cases, practitioners should ensure that they are accurately scrutinized and selected for legal action.

PRACTITIONERS SHOULD ENSURE THAT:

✓ Screenshots are preserved properly;
✓ Metadata and timestamps are retained where possible;
✓ Devices and records are securely stored; and
✓ Section 106B certificates are prepared at an early stage of proceedings.

[85] Evidence Act, Cap 80.
[86] n73.
[87] n60.

2.4.4 Correspondence, Documentary Evidence, and Supporting Materials

Correspondence between the migrant worker and actors facilitating migration and overseas employment may be particularly important in establishing claims of fraud, deception, coercion, or misrepresentation relating to recruitment and working conditions abroad. Correspondence includes emails, WhatsApp messages, social media exchanges, voice notes, and text messages.

DIGITAL COMMUNICATIONS AS EVIDENCE MAY DEMONSTRATE:

✓ Promises concerning salary or working conditions
✓ Travel instructions and deployment arrangements
✓ Payment demands and recruitment fees
✓ Threats, coercion, or intimidation
✓ Changes to contractual arrangements
✓ Attempts to conceal unlawful conduct

N.B. In *Kifano*, communication exchanges formed a critical evidentiary link connecting the petitioner to the respondents and demonstrating their involvement in the recruitment and deployment process.

Supporting documentary evidence may be needed to establish timelines, geographical movement, living conditions, injuries, or actual working environments abroad. Medical and mental health reports may also play an important role where physical abuse, psychological trauma, sexual violence, or exploitative working conditions are alleged. In many labour migration cases, survivors experience long-term psychological harm, making psychological assessments and counselling records particularly relevant in establishing damages and severity of harm.

SUPPORTING DOCUMENTARY, MEDICAL, AND PHYSICAL EVIDENCE TO CONSIDER

✓ Photographs and videos
✓ Airline tickets, travel records, passport stamps and immigration documentation
✓ Employment contracts and offer letters
✓ Foreign contracts of service
✓ Medical records and treatment notes
✓ Psychological assessments and counselling reports
✓ Police reports and official records
✓ Shelter, rescue, repatriation, or referral records

Such evidence may assist in establishing timelines, movement, living and working conditions, injuries, trauma, exploitation, damages, and the survivor's post-return support needs.

Witness testimony may additionally provide important corroboration where documentary evidence is incomplete or unavailable. This may include testimony from family members, co-workers, former migrant workers, neighbors, shelter providers, medical professionals, or other individuals involved in rescue, repatriation, or post-return support.

Labour migration litigation frequently involves incomplete or inconsistent documentation. Foreign contracts of service may be missing, altered, or substituted after deployment abroad, while employers and intermediaries may withhold records, confiscate passports, or fail to comply with statutory requirements governing overseas recruitment. These omissions are not necessarily neutral from an evidentiary perspective.

On the contrary, the absence of key documents may itself constitute relevant evidence capable of supporting liability. In Kifano, the Court attached significant importance to precisely these omissions and held that the respondents' failure to comply with statutory safeguards exposed the petitioner to exploitation and demonstrated non-compliance with their legal obligations[88].

2.4.5 Admissibility of Evidence Under Kenyan Law

Under the Evidence Act, only relevant evidence is admissible. Evidence is considered relevant where it relates directly or indirectly to facts in issue or assists the court in determining matters in dispute. Irrelevant material is generally inadmissible.[89]

Even where evidence is relevant, certain categories remain subject to stricter admissibility requirements. Hearsay is generally inadmissible unless it falls within recognized statutory or common law exceptions. Similarly, confessions are admissible only where voluntarily made before a judge, magistrate, or designated senior police officer in the presence of a third party. Character evidence is also subject to limitations, particularly in civil proceedings, while documentary evidence must generally be properly proved and authenticated before being admitted.

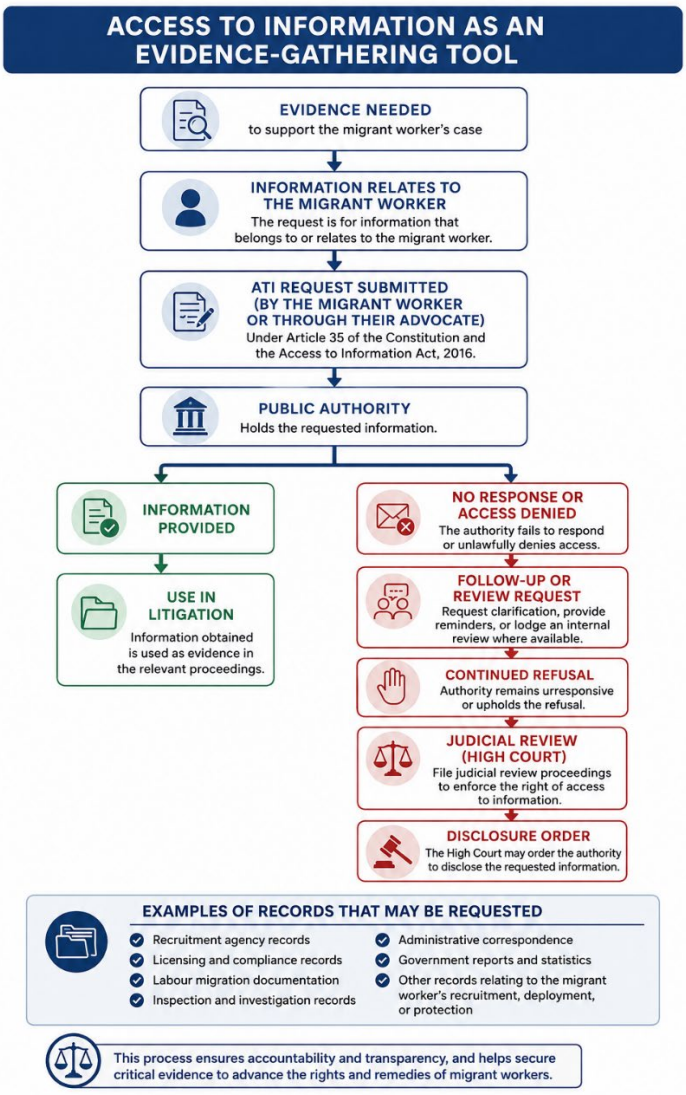
Electronic evidence is admissible under Section 106B of the Evidence Act without production of the original document, provided the statutory conditions concerning reliability and integrity of the electronic system are satisfied. Importantly, this evidence must be accompanied by the mandatory certificate required under Section 106B.[90] Failure to comply may render it inadmissible, as affirmed in *County Assembly of Kisumu v Kisumu County Assembly Service Board eKLR*.[91]

[88] n60.
[89] Evidence Act (Cap 80).
[90] Evidence Act 2010 (Cap 80) s 106B.
[91] *County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others [2015] eKLR.*

Labour migration litigation often relies on electronic communications. Practitioners should ensure that digital evidence is preserved, collected, and authenticated in accordance with statutory requirements.

2.4.6 Access to Information and Evidentiary Asymmetry

Where important records remain in the possession of public institutions, practitioners may invoke Article 35 of the Constitution[92] together with the Access to Information Act, 2016[93] to obtain them. Access to information requests may be submitted by the migrant worker or through their advocate and, where public authorities fail to respond or unlawfully refuse access, practitioners may consider pursuing judicial review proceedings before the High Court.



[92] n17, art 35.
[93] Access to Information Act, 2016.

A central challenge in labour migration cases concerns the burden of proof. Although the general rule places the evidentiary burden upon the claimant, Kenyan courts have shown willingness to shift or relax this burden where there exists a clear asymmetry of information between the parties.

In *Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike*, the Court of Appeal affirmed that once an employee establishes a prima facie case of unfair treatment, the evidentiary burden shifts to the employer to justify the conduct in question.[94]

This principle is particularly important in labour migration cases because recruitment agencies, employers, intermediaries and, in some circumstances, public authorities may control access to:

- contracts;
- payment records;
- immigration documentation; and
- deployment records.

Accordingly, once a migrant worker establishes a prima facie case of exploitation, coercion, trafficking, or unlawful recruitment, courts may require the employer or intermediary to explain or justify their conduct and documentation failures. Where relevant information is held by public institutions, practitioners should also consider whether access to information mechanisms may assist in obtaining evidence necessary to substantiate the claim.

2.4.7 Witness Testimony and Survivor-Centred Documentation

Witness testimony remains central in labour migration litigation. Often, it constitute the principal evidence available to establish patterns of coercion, deception, abuse, or exploitation abroad.

The publication *From Evidence to Remedy: A Practical Handbook for Civil Society Documentation of Labour Migration-Related Abuses in Support of Access to Justice* should therefore be read as a complementary tool to this Roadmap. The handbook emphasizes survivor-centred documentation practices capable of preserving evidence in a manner consistent with both evidentiary requirements and protection of victims from re-traumatization.

Particular attention should be given to the chronology and consistency of witness accounts, corroboration through documentary and digital evidence, the preservation of electronic communications, and the secure handling of sensitive information. Practitioners should also recognize that survivor testimony may evolve over time, particularly where victims have experienced trauma, prolonged abuse, or psychological distress. Apparent inconsistencies should therefore be assessed carefully within the broader context of trauma-informed interviewing practices rather than automatically treated as indicators of unreliability.

[94] *Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike* [2017] KECA 446 (KLR) (7 June 2017).

2.4.8 Witness Preparation and Protection Measures

Witness preparation is equally critical. Migrant workers who testify in court may be required to relive traumatic experiences involving exploitation, violence, trafficking, abuse, or unsafe working conditions. Legal practitioners should therefore ensure that witness preparation is both legally sound and psychologically sensitive.

PRACTITIONER CHECKLIST: PREPARING SURVIVORS FOR TESTIMONY

✓ Familiarize victims and witnesses with courtroom procedures

✓ Explain evidentiary and trial processes in detail

✓ Prepare victims and witnesses for cross-examination

✓ Facilitate referrals for psychosocial support at need

✓ Adopt trauma-informed interviewing approaches

In criminal proceedings involving trafficking, labour exploitation, or unlawful recruitment, practitioners should additionally consider protective measures available under the Victim Protection Act, 2014. The Act recognizes the rights of victims to protection from intimidation, secondary victimization, retaliation, and unnecessary exposure during proceedings.

WHEN ARE COURTS LIKELY TO GRANT WITNESS PROTECTION MEASURES?

- Women migrant domestic workers;
- Survivors of gender-based violence;
- Trafficking survivors; or
- Witnesses facing security risks or psychological vulnerability.

Practitioners should additionally assess whether referrals to the Witness Protection Agency or other protective mechanisms may be necessary where credible risks of retaliation, intimidation, or reprisals exist.

Accordingly, evidence collection in labour migration litigation requires not only legal and procedural knowledge, but also survivor-centred, trauma-informed, and strategically coordinated documentation practices.

Effective documentation therefore serves not only an evidentiary function, but also a strategic one, often determining whether migrant workers are ultimately able to obtain accountability, protection, and meaningful remedies through judicial processes.

Chapter 3: Non-Judicial Remedies and Access Pathways for Migrant Workers

3.1 Non-Judicial Remedies and Access Pathways

Non-judicial remedies refer to mechanisms used to resolve disputes and address violations of rights outside formal court litigation[95]. In labour migration contexts, non-judicial mechanisms frequently constitute the first practical manifestation of access to justice. For many migrant workers, particularly those located abroad, those lacking financial resources, or those facing language, immigration, or security barriers, administrative and community-based mechanisms may be substantially more accessible than formal litigation. Their effectiveness therefore has a direct impact on whether rights can be enforced in practice rather than merely recognised in law.

These mechanisms include administrative complaints procedures, alternative dispute resolution processes, institutional grievance mechanisms, and community-based justice systems. In the context of labour migration, non-judicial remedies play an important role in providing accessible, flexible, and often faster avenues through which migrant workers may seek protection, assistance, accountability, and practical forms of relief without immediately resorting to formal judicial proceedings[96].

Non-judicial remedies form an integral component of the broader right to an effective remedy recognized under international human rights law. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation emphasize that victims of human rights violations should have access to prompt, effective, accessible, and appropriate mechanisms capable of providing redress. While judicial remedies remain essential, States are also encouraged to establish administrative, quasi-judicial, and other non-judicial mechanisms that are independent, accessible, transparent, and capable of contributing to accountability and reparation. In labour migration contexts, such mechanisms frequently constitute the first practical avenue through which migrant workers seek protection, assistance, and redress[97].

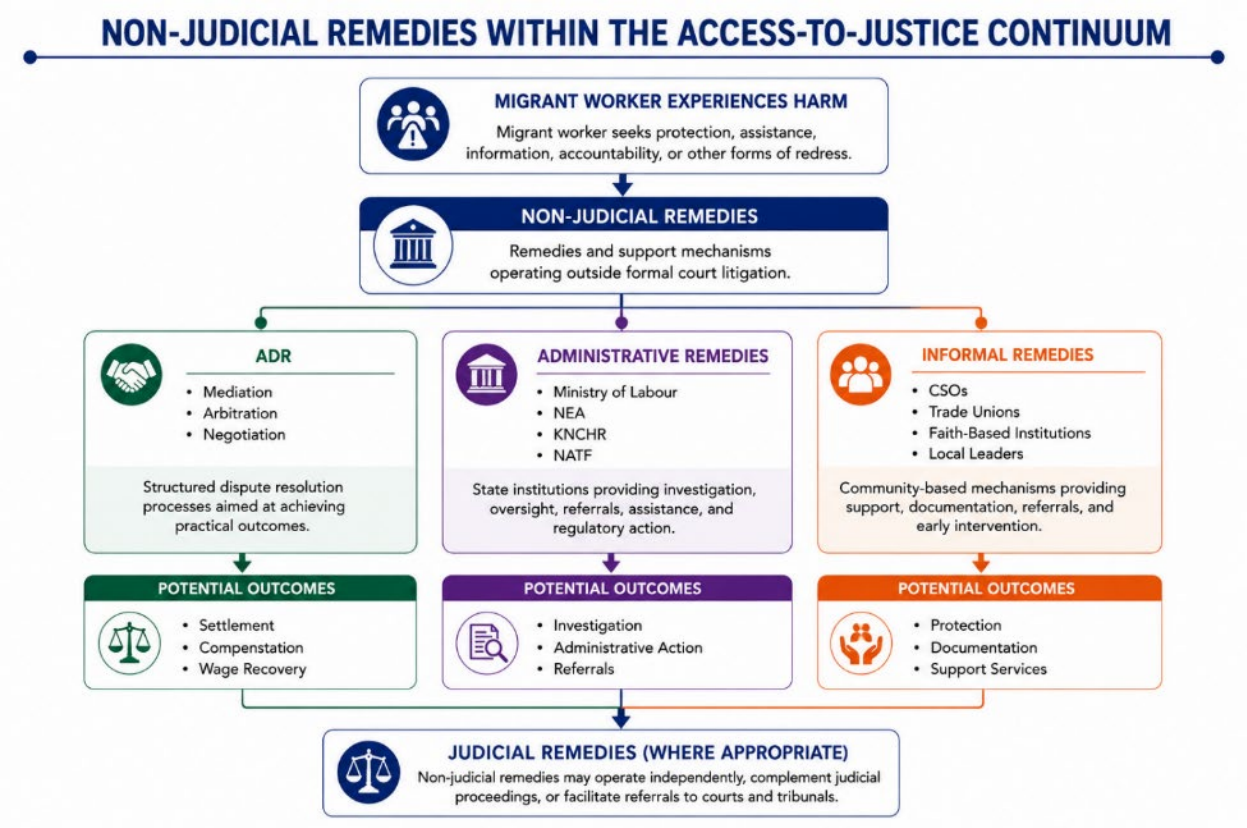
Unlike court-based litigation, non-judicial mechanisms are generally designed to be less formal, more accessible, and more responsive to the immediate realities faced by migrant workers and survivors of exploitation. They may therefore be particularly important in situations where migrant workers require urgent intervention, rapid recovery of wages or documents, repatriation support, immediate protection, or referral to additional assistance mechanisms[98]. In many labour migration-

[95] UN Human Rights Council, *Guiding Principles on Business and Human Rights* (2011) Principle 25 and commentary.
[96] International Labour Organization, *General Principles and Operational Guidelines for Fair Recruitment* (2016).
[97] UNGA Res 60/147 (16 December 2005) UN Doc A/RES/60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.
[98] International Organization for Migration, *Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation and Abuse* (2019).

related disputes, especially those involving cross-border elements, lengthy judicial proceedings may be financially, emotionally, or practically inaccessible for migrant workers and their families. Non-judicial pathways may therefore provide critical early intervention before harm escalates into prolonged exploitation, trafficking, forced labour, or other severe human rights violations[99].

These mechanisms additionally serve several practical and protective functions within labour migration governance systems. Depending on the nature of the dispute, non-judicial mechanisms may facilitate early resolution, compensation or wage recovery, repatriation, referrals to protective or judicial mechanisms, administrative action against recruitment agencies, psychosocial and reintegration support, and access to information, documentation, and legal assistance.

Importantly, non-judicial remedies do not replace the right of access to courts or formal judicial remedies. Rather, they operate alongside judicial pathways and may complement criminal, civil, constitutional, or labour-related proceedings. In some situations, non-judicial mechanisms may successfully resolve disputes without the need for litigation. In other circumstances, they may function as entry points through which abuses are identified, documented, and referred to more formal accountability mechanisms[100].



[99] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.
[100] n17, articles 48 and 50

Non-judicial remedies should not be viewed merely as alternatives to judicial proceedings. Rather, they constitute independent and complementary avenues through which migrant workers may obtain protection, accountability, assistance, and various forms of redress. In many cases, particularly where urgent intervention is required, administrative and community-based mechanisms may provide the most realistic and accessible pathway to remedy.

3.1.1 Civil Society Organizations ("CSOs")

Civil Society Organizations ("CSOs") play a central role in operationalizing access to non-judicial remedies for migrant workers[101]. In practice, many migrant workers first disclose abuses or seek assistance through CSOs, migrant support centres, survivor networks, or community-based actors before approaching formal institutions[102]. CSOs therefore frequently function as both the first point of contact and the primary support structure guiding migrant workers through multiple layers of remedy pathways.

Importantly, CSOs can play a critical role in early identification, documentation, and preservation of evidence, even where they do not provide specialized legal services. Early documentation may significantly strengthen subsequent administrative, judicial, or advocacy efforts by preserving information that could otherwise be lost over time. Detailed guidance on documentation methodologies is provided in the companion publication *From Evidence to Remedy: A Practical Handbook for Civil Society Documentation of Labour Migration-Related Abuses in Support of Access to Justice*, which should be read alongside this Roadmap.

CIVIL SOCIETY ORGANISATIONS AS ENTRY POINTS TO REMEDIES

- Provide legal awareness and "know your rights" education;
- Assist migrant workers to identify appropriate remedy pathways;
- Document violations and preserve evidence;
- facilitate referrals to institutions such as the Ministry of Labour, the National Employment Authority ("NEA"), the Kenya National Commission on Human Rights ("KNCHR"), trade unions, mediation centres, and law enforcement agencies;
- Provide legal aid and representation during negotiations, mediation, or administrative complaint procedures;
- Support psychosocial recovery and reintegration following exploitation or abuse; and
- Assist with cross-border follow-up where migrant workers remain outside Kenya.

These functions are particularly important because labour migration related abuses often involve overlapping legal, administrative, social, and protection concerns requiring coordinated responses, and non-judicial remedies therefore operate most effectively as interconnected pathways.

[101] International Commission of Jurists, *Access to Justice for Migrant Workers in Africa* (2021).
[102] Global Alliance Against Traffic in Women, *Access to Justice for Migrant Workers* (2017).

3.2 Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution ("ADR") refers to structured processes used to resolve disputes outside formal court litigation while still recognizing legal rights and obligations[103]. ADR mechanisms provide flexible, less formal, and often faster procedures for resolving disputes compared to judicial proceedings[104]. In labour migration contexts, ADR may be particularly important because many disputes are urgent, cross-border in nature, and involve vulnerable workers who may face substantial barriers in accessing formal courts[105].

ADR mechanisms may be especially useful in situations where the parties seek practical and time-sensitive solutions relating to unpaid wages, recruitment disputes, repatriation arrangements, breach of employment terms, or other employment-related grievances capable of negotiated resolution. In many labour migration-related disputes, migrant workers may prioritize rapid recovery of wages, return of documents, safe repatriation, or immediate cessation of harmful practices over lengthy adversarial proceedings.

The principal forms of ADR relevant to labour migration disputes include:

- Mediation;
- Arbitration; and
- Negotiation.

ADR is generally most appropriate where disputes are suitable for negotiated or conciliatory resolution without immediate need for judicial determination[106]. This may particularly arise where speed, flexibility, confidentiality, and continued engagement between parties remain important.

COMMON LABOUR MIGRATION DISPUTES SUITABLE FOR ADR

- Wage disputes and unpaid salaries;
- Recruitment fee disputes or illegal recruitment charges;
- Contract substitution or breach of employment terms;
- Disputes concerning repatriation arrangements;
- Recruitment-related disputes involving agencies or intermediaries; and
- Employment disputes where parties remain open to negotiated settlement.

ADR may additionally be used selectively in certain exploitation-related disputes where there is no ongoing risk of harm and the primary objective is compensation, settlement, or other remedial action rather than criminal accountability.

[103] Arbitration Act (Cap 49 Laws of Kenya).
[104] n17, article 159(2)(c).
[105] ILO, *Promoting Fair Recruitment and Preventing Trafficking in Persons (2021).*
[106] n28.

However, serious cases involving trafficking in persons, coercion, ongoing violence, forced labour, sexual abuse, unlawful confinement, or continuing risk to migrant workers may require immediate referral to protective, administrative, or criminal mechanisms before ADR can appropriately be considered[107]. Practitioners should therefore carefully assess survivor safety, power imbalances, evidentiary considerations, and the nature of the alleged abuse before recommending ADR pathways.

Survivor-Centred Considerations Before ADR

Before recommending mediation, negotiation, or arbitration, practitioners should conduct a survivor-centred assessment of the circumstances of the case.

KEY QUESTIONS BEFORE RECOMMENDING ADR

- Ongoing risks to the safety of the migrant worker;
- Indicators of trafficking in persons, forced labour, or coercion;
- Power imbalances between the parties;
- Immigration-related dependency on the employer;
- Language barriers;
- Risks of retaliation;
- Survivor's informed preferences and objectives; and
- Availability of legal representation or support services.

ADR should never be used in a manner that pressures survivors to waive rights, conceal serious abuses, or forego criminal accountability. Participation should remain voluntary, informed, and consistent with the survivor's safety, dignity, and autonomy.

3.2.1 Mediation (Including Hybrid Court-Annexed Model)

Mediation is a dispute resolution process in which a neutral third party facilitates dialogue between disputing parties with the aim of assisting them to reach a voluntary settlement[108]. Unlike a judge or arbitrator, the mediator does not impose a decision upon the parties. Instead, the mediator assists the parties in identifying issues, clarifying positions, improving communication, and exploring mutually acceptable solutions.

In labour migration-related disputes, mediation may provide an important mechanism for resolving disputes quickly and pragmatically while avoiding the financial and procedural burdens often associated with litigation. Mediation may be particularly useful where migrant workers seek urgent

[107] n33.
[108] Mediation Accreditation Committee, *Court Annexed Mediation Guidelines (Kenya Judiciary).*

wage recovery, repatriation support, reimbursement of recruitment fees, return of documents, or other practical remedies capable of negotiated settlement.

Mediation in Kenya operates through both judicially anchored and non-judicial models.

(a) Court-Annexed Mediation (Judicially Anchored)

Court-annexed mediation occurs where a dispute has already been filed before a court[109], most commonly the Employment and Labour Relations Court ("ELRC"), and the court refers the matter to mediation following preliminary screening[110].

KEY FEATURES OF COURT-ANNEXED MEDIATION

- Integration within judicial proceedings;
- Referral through court direction;
- Structured and time-bound procedures;
- Appointment of a court-accredited mediator; and
- Adoption of settlement agreements as court orders.

This form of mediation retains a judicial character because it operates within the framework of ongoing court proceedings and may result in enforceable court-sanctioned outcomes.

(b) Private Mediation (Non-Judicial)

Private mediation occurs where parties voluntarily agree to engage in mediation outside formal court proceedings. Migrant workers may access private mediation through CSOs, trade unions, faith-based organizations, labour offices, legal aid providers, or accredited mediation centres.

KEY FEATURES OF PRIVATE MEDIATION

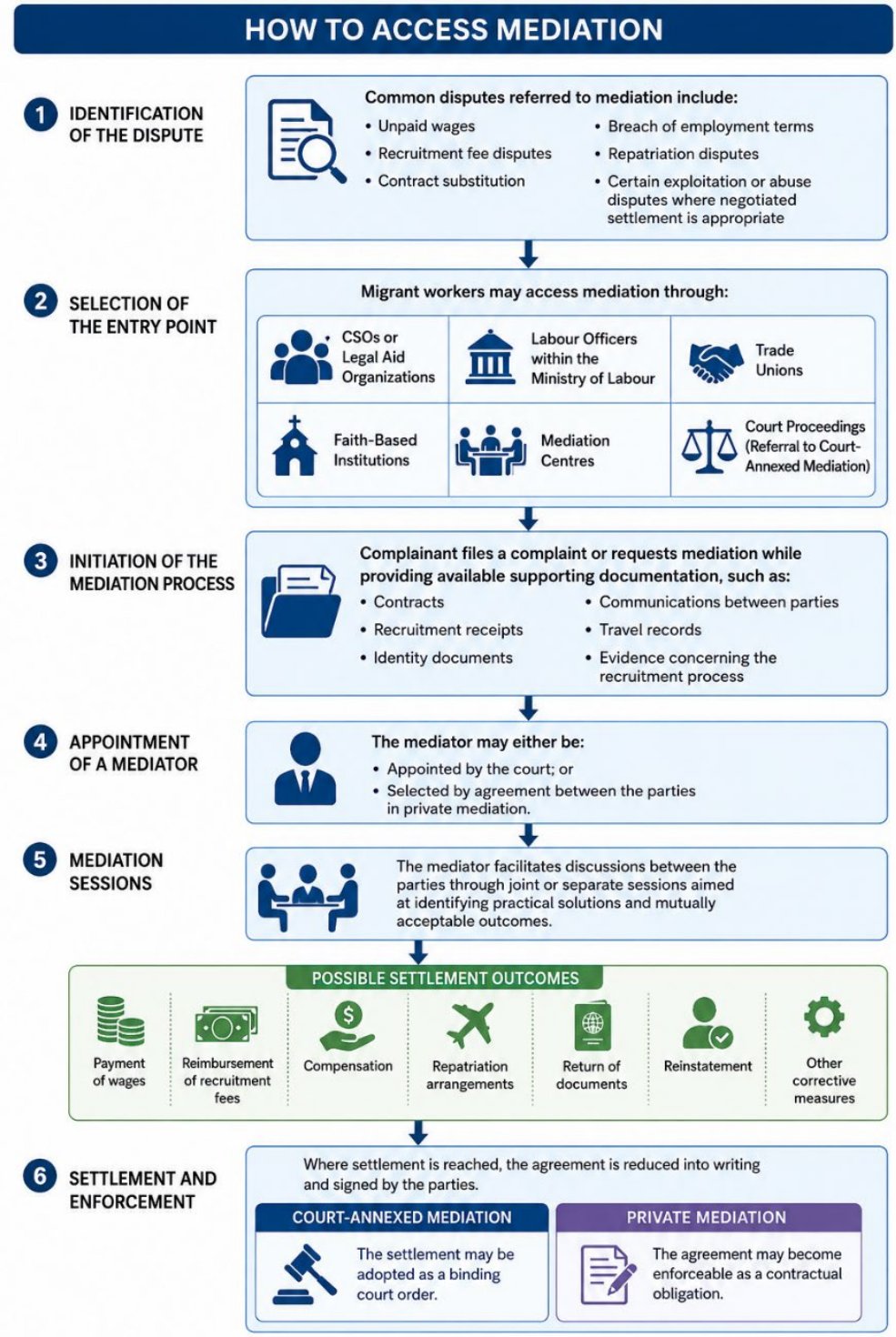
- Voluntary participation by the parties;
- Absence of court involvement at the initiation stage;
- Flexible procedures and timelines;
- Confidential discussions; and
- Settlement agreements enforceable as contracts once reduced into writing.

Private mediation therefore constitutes a fully non-judicial process that may nevertheless produce important and practically enforceable outcomes[111].

[109] Civil Procedure Act (Cap 21 Laws of Kenya), s 59B
[110] Judiciary of Kenya, Court Annexed Mediation Manual (2018).
[111] Chartered Institute of Arbitrators (Kenya Branch), *Alternative Dispute Resolution Practice Guidelines.*

Step-by-Step Access to Mediation

The mediation process typically progresses through a series of stages, from identification of the dispute and initiation of the process to settlement and enforcement, as illustrated below.



RELEVANCE OF MEDIATION TO RESOLVING MIGRANT WORKERS CASES

- Facilitate rapid resolution of disputes;
- Reduce litigation costs and procedural barriers;
- Provide flexible and practical remedies;
- Preserve relationships where continued engagement remains possible; and
- Support time-sensitive cross-border resolutions.

Because labour migration-related disputes frequently involve urgent economic and protection concerns, mediation may provide an important survivor-centred mechanism capable of delivering practical outcomes more rapidly than formal judicial proceedings.

Mediation should not be used to resolve allegations of trafficking in persons, forced labour, sexual violence, unlawful confinement, or other serious criminal conduct in a manner that circumvents investigation, protection obligations, or access to criminal accountability.

3.2.2 Arbitration

Arbitration is a formal dispute resolution process in which a neutral arbitrator hears evidence from disputing parties[112] and issues a binding decision known as an arbitral award[113]: it involves adjudication by a private decision-maker who considers the evidence and arguments presented.

KEY FEATURES OF ARBITRATION

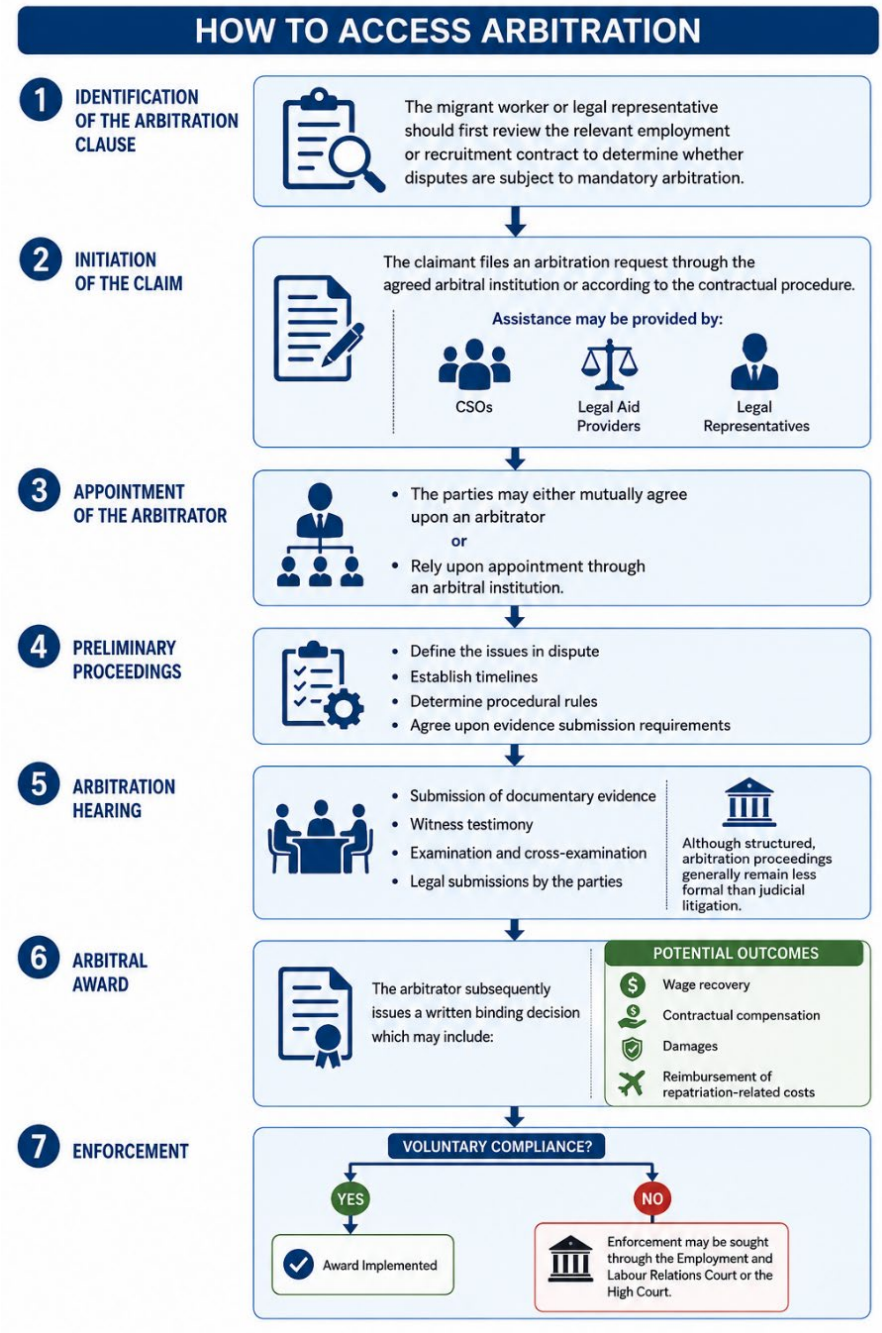
- Appointment of a neutral arbitrator;
- Structured but flexible procedures;
- Presentation of documentary and witness evidence;
- Binding written decisions;
- Confidentiality of proceedings; and
- Limited grounds for appeal or judicial challenge.

Although arbitration is generally less formal than court proceedings, it retains an adversarial structure and follows defined procedural rules. It is particularly relevant in labour migration disputes where recruitment and employment contracts, or overseas deployment arrangements, contain clauses requiring disputes to be resolved through arbitral mechanisms[114].

[112] Arbitration Act (Cap 49), s 3.
[113] UNCITRAL Model Law on International Commercial Arbitration.
[114] ILO, Labour Migration and Recruitment: *Fair Recruitment Practices (2019).*

Step-by-Step Access to Arbitration

The arbitration process proceeds through several stages, from identification of the arbitration clause to the issuance of an arbitral award, the enforcement of which may be sought through the Employment and Labour Relations Court or the High Court[115], as illustrated in the figure below.



[115] Arbitration Act (Cap 49), ss 35-37.

RELEVANCE OF ARBITRATION IN LABOUR MIGRATION-RELATED DISPUTES

- Produce binding and enforceable outcomes;
- Provide faster resolution than some court proceedings;
- Maintain confidentiality;
- Facilitate cross-border contractual dispute resolution; and
- Provide structured mechanisms where contractual obligations already exist.

At the same time, arbitration may also present limitations for migrant workers, particularly where contracts contain unequal bargaining terms, excessive costs, or restrictive procedural clauses. Practitioners should therefore carefully assess whether arbitration clauses are fair, accessible, and compatible with the rights and interests of migrant workers before recommending arbitration as the preferred remedy pathway.

Particular scrutiny should be given to arbitration clauses contained in standard-form employment or recruitment contracts. Where such clauses impose disproportionate costs, require proceedings in inaccessible jurisdictions, or otherwise undermine effective access to justice, their enforceability may be subject to legal challenge.

3.2.3 Negotiation

Negotiation is a direct dispute resolution process in which parties communicate with one another, either personally or through representatives, in an effort to reach a mutually acceptable agreement without involvement of a neutral third party[116].

Unlike mediation or arbitration, negotiation is entirely party-driven, meaning that control over both the process and the outcome remains with the disputing parties themselves.

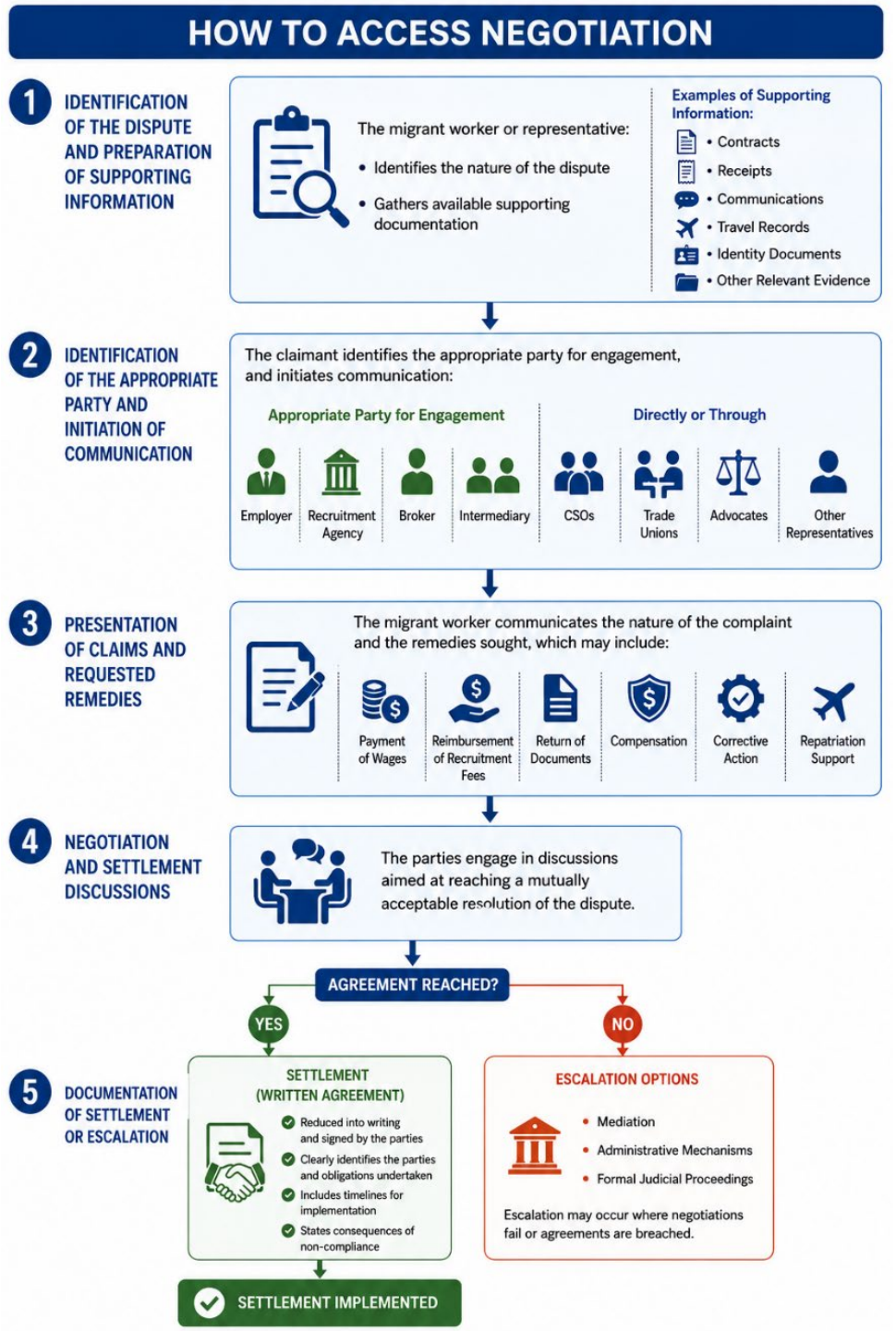
In labour migration contexts, negotiation may occur between migrant workers and recruitment agencies, between workers and employers, through CSOs, trade unions, or legal representatives acting on behalf of migrant workers, and during the early stages of disputes before escalation into formal proceedings.

Negotiation often functions as the first practical line of dispute resolution within labour migration contexts[117].

[116] R Fisher, W Ury and B Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (3rd edn, Penguin 2011).
[117] International Labour Organization, *Practical Guidelines for Employers and Recruiters on Fair Recruitment* (2019).

Step-by-Step Access to Negotiation

Negotiation generally involves a series of practical and flexible stages rather than a rigid procedural framework.



RELEVANCE OF NEGOTIATION IN LABOUR MIGRATION DISPUTES

- Provide rapid intervention in urgent disputes;
- Reduce dependence on formal systems;
- Facilitate early recovery of wages or documents;
- Reduce procedural and financial barriers;
- Enable early intervention by CSOs and trade unions; and
- Prevent escalation of disputes into more severe forms of exploitation.

Because many labour migration-related disputes begin during recruitment or pre-departure stages, early negotiation and intervention may sometimes prevent abuses from escalating into trafficking, forced labour, or prolonged exploitation abroad[118].

3.3 Administrative Remedies

Administrative remedies refer to complaint and grievance-handling mechanisms within state institutions[119] that address labour migration-related violations outside formal court litigation. Unlike judicial mechanisms, these institutions do not primarily issue binding judicial judgments. Instead, they focus on investigation, conciliation, regulation, administrative enforcement, referrals, and oversight.

Administrative mechanisms are particularly important in labour migration contexts[120] because they frequently provide accessible and lower-threshold entry points through which migrant workers may seek assistance, protection, or accountability before pursuing litigation.

MOST COMMON FORMS OF ADMINISTRATIVE REMEDIAL MECHANISMS PROVIDED BY DIFFERENT INSTITUTIONS

- registration and investigation of complaints;
- conciliation and mediation;
- regulatory sanctions against recruitment agencies;
- referral to law enforcement or courts;
- monitoring and compliance oversight;
- victim referral and support services; and
- administrative recommendations or corrective measures.

[118] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.
[119] Fair Administrative Action Act, 2015.
[120] n28.Labour

Administrative institutions additionally play an important role in identifying patterns of abuse[121], regulating labour migration actors, documenting violations, and strengthening accountability within recruitment and deployment systems.

3.3.1 Ministry of Labour (MoL)

The Ministry of Labour constitutes one of the principal state institutions responsible for handling labour-related disputes[122] in Kenya through labour officers stationed at both national and county levels. In the specific context of labour migration-related disputes, Global Justice Kenya confirmed through consultations with the Directorate of Labour Migration Management that this function is performed by the Directorate, which serves as the primary institutional focal point within the Ministry for receiving, assessing, and facilitating the resolution of labour migration complaints. In practice, the Ministry frequently operates as one of the first formal governmental entry points for migrant workers facing employment-related grievances.

The Ministry does not function as a court and does not issue binding judicial judgments. Rather, it primarily facilitates resolution through:

- registration of complaints;
- conciliation and mediation between parties;
- issuance of demand notices where appropriate; and
- referral of unresolved disputes to the Employment and Labour Relations Court[123].

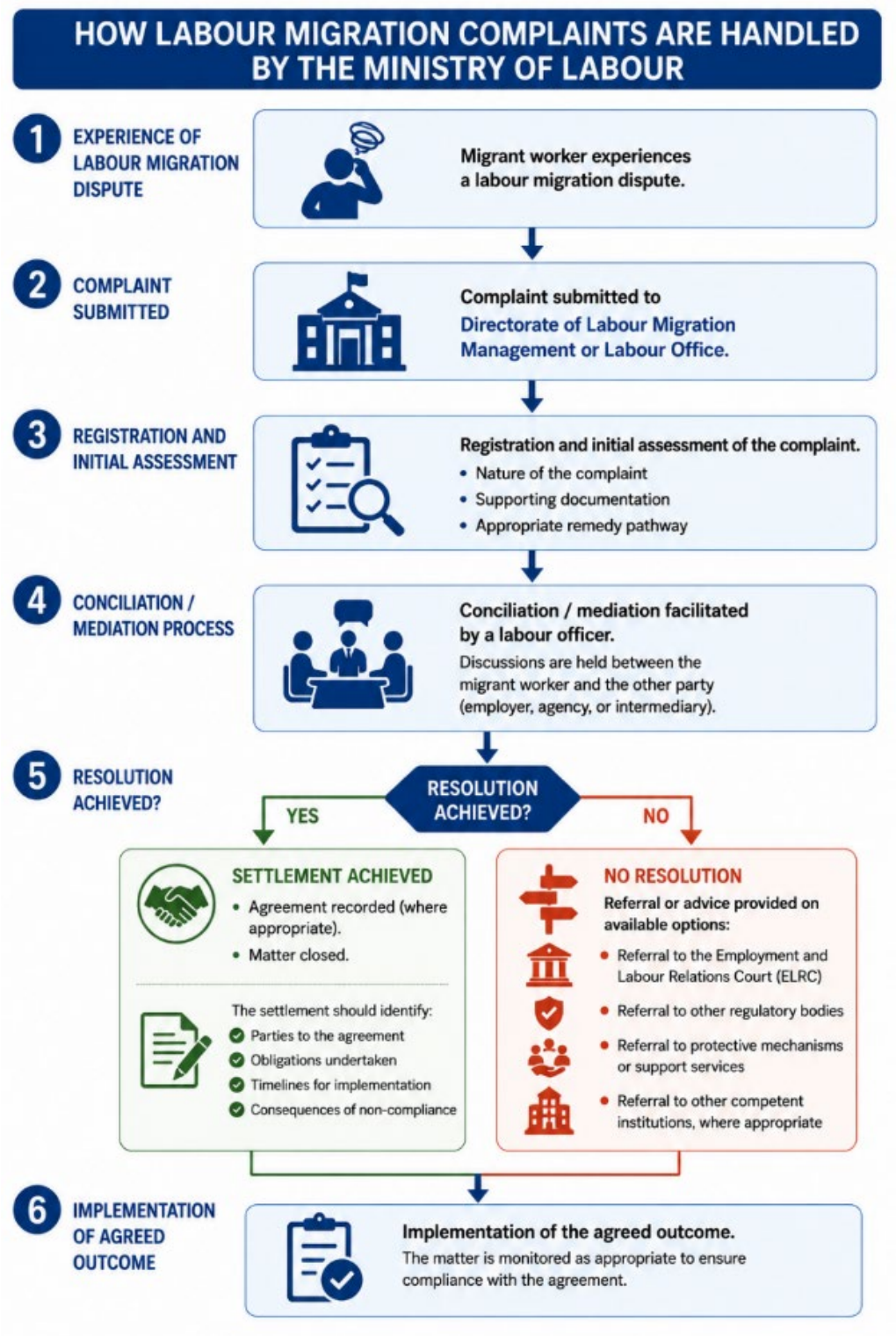
The Ministry therefore operates primarily as a conciliation-based administrative mechanism. Labour officers may also play an important evidentiary and advisory role by documenting complaints, facilitating communication between parties, and identifying matters requiring referral to judicial, regulatory, or protective institutions.

Migrant workers may seek assistance from County Labour Offices in relation to a wide range of labour migration-related disputes, including illegal recruitment fees, wage claims, breach of contract, non-deployment, unfair treatment, and other exploitation-related complaints. Complaints may be submitted directly to the relevant Labour Office together with supporting documentation. Upon receiving a complaint, the labour officer may register the matter, open an administrative file, and assess the nature of the dispute.

The labour officer may then facilitate conciliation discussions between the migrant worker and the employer, recruitment agency, or other responsible parties with a view to achieving an amicable resolution. Where a settlement is reached, the agreement may be recorded. If the dispute remains

[121] National Employment Authority Act, 2016.
[122] n28.
[123] Employment and Labour Relations Court Act, 2011.

unresolved, the labour officer may advise the parties on available legal remedies or refer the matter. The process is summarized in the figure below.



3.3.2 National Employment Authority (NEA)

The National Employment Authority ("NEA") is responsible for regulating recruitment agencies[124] and overseeing labour migration and foreign employment processes in Kenya.

The NEA plays an important regulatory and oversight role within Kenya's labour migration governance framework.

NEA'S FUNCTIONS IN LABOUR MIGRATION GOVERNANCE

- Licensing and monitoring recruitment agencies;
- Investigating illegal recruitment practices;
- Receiving complaints relating to recruitment fraud and exploitation;
- Coordinating with labour authorities and law enforcement agencies; and
- Maintaining reporting and oversight systems relating to migrant workers.

Although the NEA does not operate as a court, it possesses important regulatory and enforcement authority, including the power to suspend or revoke licences[125] and refer matters for criminal investigation or prosecution.

The NEA additionally utilizes the recruitment security bond system[126] as part of regulatory compliance and accountability measures.

Migrant workers may submit complaints to the National Employment Authority ("NEA") concerning fraudulent recruitment agencies, illegal recruitment fees, fake job offers, non-deployment, contract substitution, or other exploitative recruitment practices. Complaints may be lodged through NEA offices, designated hotlines, online platforms, or other available reporting channels. Supporting documentation may include employment contracts, payment receipts, communications with recruiters or agencies, agency registration details, travel documents, and other relevant evidence.

Upon receipt of a complaint, the NEA may conduct investigations independently or in coordination with other competent authorities. Where violations are established, the Authority may impose administrative sanctions, including suspension or revocation of recruitment licences, refer matters for criminal investigation or prosecution, or take other regulatory measures within its mandate. Although the practical modalities for invoking security bonds remain underdeveloped, complaints submitted to the NEA may create an important administrative record supporting future claims

[124] n23.
[125] Labour Migration Management Bill No 42 of 2023.
[126] National Employment Authority (Kenya), *Guidelines on Recruitment Agencies*.

involving recruitment-related misconduct. The complainant is ordinarily informed of the outcome of the investigation and any administrative action taken.

3.3.3 Kenya National Commission on Human Rights (KNCHR)

The Kenya National Commission on Human Rights ("KNCHR") is an independent constitutional commission[127] mandated to promote and protect human rights in Kenya.

Within labour migration contexts, the KNCHR may play an important role in investigating, documenting, monitoring, and responding to human rights violations affecting migrant workers[128], particularly in cases involving trafficking in persons, forced labour, abuse abroad, exploitation, arbitrary confinement, violence, or other serious rights violations.

HOW THE KNCHR CAN SUPPORT ACCESS TO JUSTICE FOR MIGRANT WORKERS

- Receive complaints concerning human rights violations;
- Conduct investigations and inquiries;
- Summon witnesses and request documentation;
- Undertake fact-finding missions;
- Document patterns of abuse; and
- Issue recommendations to relevant authorities.

Although the KNCHR does not issue binding judicial orders[129], its investigative and monitoring role may significantly contribute to accountability, documentation, advocacy, and referral of cases to additional institutions.

The Kenya National Commission on Human Rights ("KNCHR") receives and investigates complaints concerning a wide range of human rights violations, including trafficking in persons, forced labour, discrimination, gender-based violence, arbitrary detention, unlawful confiscation of documents, restrictions on freedom of movement, and other abuses arising in the context of labour migration. Complaints may be submitted through KNCHR offices, online platforms, email, or other designated reporting channels. Supporting evidence may include documents, communications, witness statements, photographs, medical records, or any other information relevant to the complaint.

Upon receiving a complaint, the Commission may review and register the matter, conduct investigations, interview witnesses, examine documentary evidence, issue summons where necessary, and undertake fact-finding inquiries. Following its investigation, the KNCHR may issue findings, make recommendations, advocate for corrective measures, or support accountability

[127] n17, article 59.
[128] Kenya National Commission on Human Rights Act, 2011.
[129] Kenya National Human Rights Commission, *Silenced and Forgotten: Survivors of Labour Migration Abuses* (2023 report).

efforts through engagement with relevant authorities. Where appropriate, the Commission may also refer matters to other competent institutions, including the Ministry of Labour, the National Employment Authority, law enforcement agencies, or the courts.

Beyond addressing individual complaints, the KNCHR may also investigate systemic human rights concerns affecting migrant workers, conduct public inquiries, issue recommendations to public authorities, undertake monitoring activities, and contribute to broader accountability efforts through reporting and engagement with regional and international human rights mechanisms. In this respect, the Commission may serve not only as a remedy mechanism for individual complainants but also as an important institution for identifying and addressing structural patterns of abuse.

3.3.4 National Assistance Trust Fund (NATF) and Vulnerability Support Mechanisms

The National Assistance Trust Fund ("NATF") and related vulnerability support mechanisms may provide assistance to migrant workers who qualify as victims of trafficking in persons under the Counter-Trafficking in Persons framework[130].

These mechanisms do not primarily function as dispute resolution bodies[131]. Rather, they focus on survivor protection, rehabilitation, and reintegration support. While the Fund may also support access to legal assistance in certain circumstances, this aspect has already been discussed under the Cost Mitigation Measures section.

SUPPORT MEASURES PROVIDED UNDER NATF

- Victim return to and from Kenya;
- Resettlement;
- Re-integration;
- Shelter and other basic needs;
- Psychosocial support;
- Appropriate medical assistance;
- Legal assistance or legal information, including information on the
- Relevant judicial and administrative proceedings; or
- Any other necessary assistance the victim may require; and
- Such other purposes the Advisory Committee may recommend.

Assistance from the National Assistance Trust Fund may be sought directly by an individual victim of trafficking, a person known to the victim, a law enforcement or other government officer acting

[130] Counter-Trafficking in Persons Act 2010,s15.
[131] Ministry of Labour and Social Protection (Kenya), policy documents on migrant worker reintegration and victim support.

on behalf of a presumed victim, or by a non-governmental organisation, including CSOs and faith-based organisations working in the counter-trafficking sector[132].

The Fund may provide assistance directly to victims or support organisations delivering services such as repatriation, resettlement, reintegration, shelter, psychosocial support, medical care, legal assistance, and other forms of victim support.

Individual applications must be submitted through the prescribed forms together with supporting documentation, while organisations may apply through periodic calls for proposals and must satisfy eligibility criteria relating to registration, experience, governance, and direct assistance to victims of trafficking[133].

Importantly, the application, screening, and vulnerability assessment forms are primarily intended to assist the Trust Fund in determining whether a person qualifies as a victim of trafficking for purposes of receiving assistance[134]. In practice, however, these tools may function more effectively as preliminary identification and referral instruments than as comprehensive trafficking assessments, as they do not necessarily capture all elements required to establish trafficking in persons under the Counter-Trafficking in Persons Act. Practitioners should therefore supplement these forms with broader legal and factual documentation where accountability or additional remedy pathways may be pursued.

3.3.5 Administrative Responses to Identity Document Violations

Administrative and enforcement mechanisms may additionally address violations involving identity and travel documents, which remain common within labour migration contexts[135].

COMMON IDENTITY AND TRAVEL DOCUMENT ISSUES FACED BY MIGRANT WORKERS

- Confiscation of passports by employers or recruitment agencies;
- Unlawful retention of identity documents;
- Restrictions on movement linked to document confiscation;
- Document confiscation as an indicator of trafficking in persons, forced labour, or coercive control;
- Loss or misuse of documents; and
- Barriers to replacement or recovery of identity documents.

[132] Ministry of Labour and Social Protection (Kenya), State Department for Social Protection and Senior Citizen Affairs, *National Assistance Trust Fund for Victims of Trafficking in Persons: Trust Fund Guidelines for Assisting Victims of Trafficking in Persons* (2023).
[133] ibid.
[134] ibid.
[135] International Labour Organization, *General Principles and Operational Guidelines for Fair Recruitment* (2016).

These matters may involve coordinated intervention between labour offices, law enforcement agencies, the NEA, the KNCHR, and other relevant institutions.

Complaints concerning confiscated, unlawfully retained, misused, or lost identity and travel documents may be reported to labour offices, police authorities, the National Employment Authority (NEA), the Kenya National Commission on Human Rights (KNCHR), or other competent authorities depending on the circumstances of the case.

Supporting documentation may include copies of identity documents, contracts, communications, travel records, witness statements, or other evidence relevant to the circumstances of the violation. Relevant authorities may investigate the matter, facilitate recovery or release of the documents, initiate enforcement action where appropriate, or assist with replacement procedures where recovery is not possible.

Where document confiscation forms part of a broader pattern of coercion, restriction of movement,[136] trafficking in persons, forced labour, or other serious abuse, referral may additionally be made to protective, administrative, or criminal accountability mechanisms.

3.4 Informal Remedies

Informal remedies refer to community-based and socially accessible pathways operating outside formal judicial and administrative systems[137]. These mechanisms frequently constitute the earliest and most accessible points of intervention for migrant workers experiencing abuse, exploitation, or labour migration-related disputes[138].

Informal mechanisms may be particularly valuable for migrant workers who fear formal reporting, lack documentation, distrust state institutions, require urgent assistance, or prefer to seek community-based support before engaging in more formal remedy mechanisms. Although they generally lack binding adjudicative authority, they may nevertheless play an important role in labour migration cases because they are often more accessible, trusted, and responsive.

INFORMAL REMEDIES: COMMON FUNCTIONS

- Early dispute resolution;
- Psychosocial support;
- Community mediation;
- Referral to formal institutions;
- Documentation of abuse; and
- Prevention of escalation into more severe forms of exploitation.

[136] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3.
[137] United Nations Development Programme, *Informal Justice Systems: Charting a Course for Human Rights-Based Engagement* (2006).
[138] Global Alliance Against Traffic in Women, *Access to Justice for Migrant Workers* (2017).

3.4.1 Trade Unions and Workers' Associations

Trade unions and workers' associations, including organizations such as Central Organization of Trade Unions (COTU-K) and the Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers ("KUDHEIHA"), play an important role in advocating for labour rights and supporting migrant workers and migrant domestic workers[139].

HOW TRADE UNIONS CAN SUPPORT MIGRANT WORKERS

- Assess complaints and identify appropriate remedy pathways;
- Provide legal advice, guidance, and referrals;
- Negotiate with employers and recruitment agencies;
- Assist with dispute resolution and mediation;
- Support collective complaints and worker representation;
- Facilitate referrals to labour offices, courts, and other institutions;
- Support Labour Inspections;
- Assist with wage recovery and labour rights enforcement;
- Provide ongoing legal, advisory, or collective support during administrative and judicial proceedings;
- Engage in policy advocacy and social dialogue;
- Monitor recruitment and employment practices.

Migrant workers may also seek assistance from a trade union or workers' association by contacting the relevant union office or representative and providing information concerning the dispute. The union will typically assess the nature of the complaint and determine appropriate intervention pathways, which may include legal advice, negotiation, mediation, collective advocacy, or referral to other support services.

Where appropriate, the union may engage directly with the employer, recruitment agency, or other responsible parties in an effort to resolve the dispute. If the matter cannot be resolved through informal intervention, the union may assist the worker in pursuing further remedies through the Ministry of Labour, the Employment and Labour Relations Court, or other competent institutions.

Depending on its mandate and available resources, the union may continue to provide legal, advisory, or collective support throughout subsequent administrative or judicial proceedings.

Trade unions ultimately operate both as worker protection mechanisms and as collective advocacy structures within labour migration governance systems.

[139] Labour Relations Act 2007 (No 14 of 2007) (Kenya); see also KUDHEIHA publications on migrant domestic workers.

3.4.2 Local Administration (Chiefs and Village Elders)

Local administrative structures, including chiefs and village elders[140], frequently function as first-response community-based dispute resolution mechanisms within Kenya and although they do not operate as formal judicial bodies, they can play an important role in labour migration related dispute resolution.

COMMON FUNCTIONS OF CHIEFS AND VILLAGE ELDERS

- Informal mediation;
- Community verification of facts;
- Conflict resolution;
- Referral to formal institutions; and
- Early intervention in disputes.

These mechanisms may be particularly accessible to migrant workers and families in rural or underserved areas.

Migrant workers and their families may seek assistance from chiefs, assistant chiefs, village elders, or other community leaders by reporting the dispute and explaining the circumstances of the case. Local leaders may seek clarification, verify relevant facts through community networks, engage with the parties involved, and facilitate dialogue aimed at resolving the dispute informally where appropriate. In some cases, they may also assist affected individuals in accessing community support structures and relevant services. Where informal efforts do not result in resolution, or where the matter involves trafficking, forced labour, sexual violence, or other serious criminal conduct, referral should be made to the appropriate administrative, protection, or judicial authorities.

3.4.3 Faith-Based Institutions

Faith-based institutions, including churches, mosques, and other religious organizations, frequently play an important role in community-level support and informal justice processes[141].

For many migrant workers and survivors of exploitation, faith-based institutions may constitute trusted and accessible spaces through which individuals first seek assistance. These institutions may therefore function as important community-based entry points into broader protection and remedy systems[142].

Migrant workers and their families may seek assistance from a trusted religious leader, church, mosque, or other faith-based institution by disclosing their concerns and seeking guidance,

[140] National Government Coordination Act, 2013.
[141] International Organization for Migration, *Community-Based Protection in Migration Contexts*.
[142] United Nations High Commissioner for Refugees, *Community-Based Protection Guidelines*.

counselling, or practical support. Faith-based institutions may provide spiritual support, psychosocial assistance, temporary shelter, humanitarian aid, and community-based support.

HOW FAITH-BASED INSTITUTIONS MAY ASSIST MIGRANT WORKERS

- Emotional, spiritual and psychosocial support, including counselling;
- Temporary shelter;
- Humanitarian aid;
- Community based support;
- Informal mediation;
- Moral persuasion and conflict resolution; and
- Referral to CSOs and government institutions, when appropriate.

In practice, churches have often served as important safe spaces for distressed migrant workers, both in Kenya and in destination countries. In several Gulf and Arab States, churches have assisted migrant workers fleeing abusive situations by providing temporary shelter, facilitating communication with families, helping resolve disputes with employers or recruitment agencies, supporting access to medical or legal assistance, and assisting with repatriation efforts.

Where appropriate, faith-based institutions may facilitate dialogue between parties or refer migrant workers and their families to civil society organizations, legal aid providers, labour offices, healthcare services, law enforcement authorities, or other specialised support mechanisms. They may also assist families seeking information concerning missing migrant workers and provide support during bereavement and reintegration processes.

Faith-based institutions may therefore play an important complementary role within broader access to justice ecosystems for migrant workers, particularly by providing trusted, low-threshold, and community-based avenues through which vulnerable individuals may seek assistance and protection.

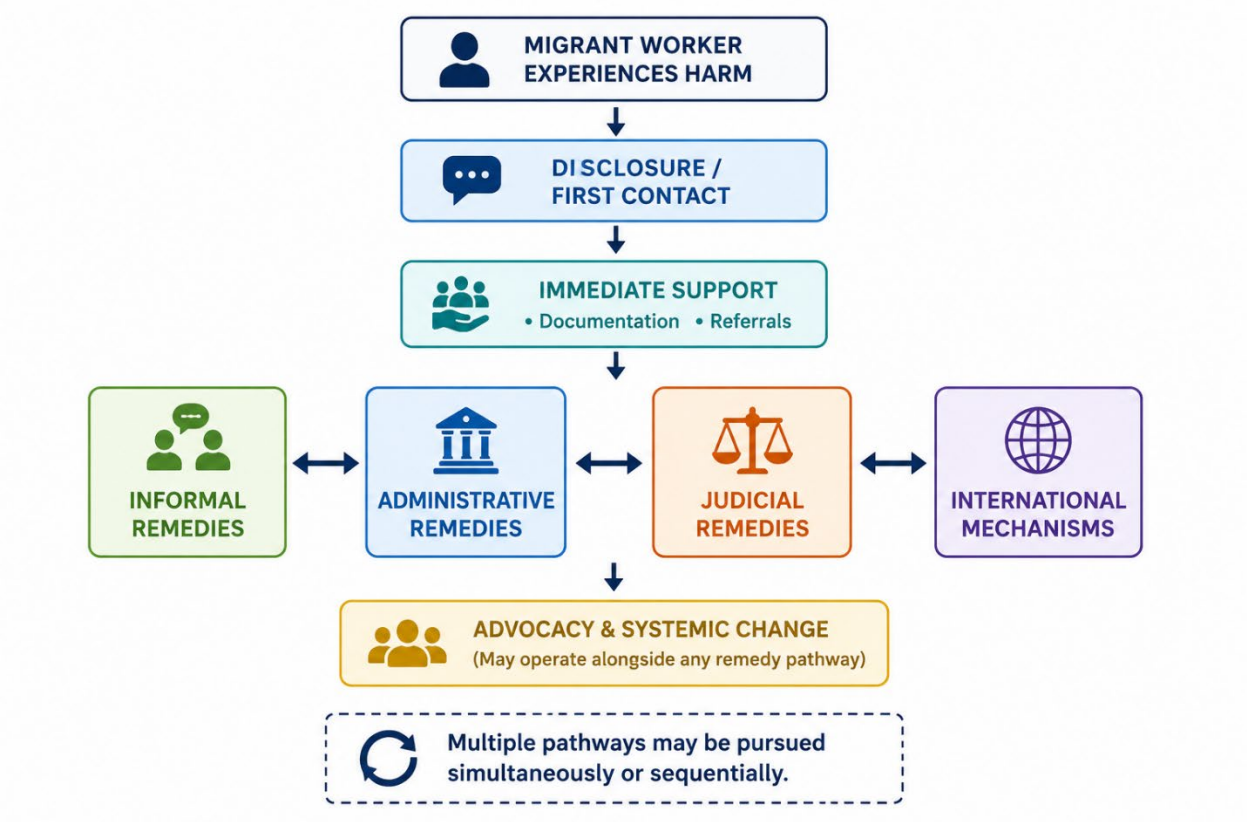
3.5 Navigating Non-Judicial Remedy Pathways

In practice, migrant workers rarely obtain justice through a single institution or remedy mechanism. Rather, access to justice frequently involves navigating multiple, interconnected pathways depending on the nature of the violation, the urgency of the situation, the availability of evidence, and the survivor's objectives. A complaint may initially be disclosed to a Civil Society Organisations ("CSO"), trade union, faith-based institution, or community actor, which may provide immediate support, assist with documentation, and facilitate referrals to more formal mechanisms. The matter may subsequently proceed through negotiation, mediation, administrative complaints before institutions such as the Ministry of Labour or the National Employment Authority ("NEA"), or, where appropriate, judicial proceedings before the courts.

In some cases, domestic remedies may be complemented by regional or international mechanisms, particularly where violations reveal systemic patterns of abuse, regulatory failures, or broader human rights concerns. These pathways are not mutually exclusive and may operate simultaneously or sequentially depending on the circumstances of the case. The most appropriate pathway will depend upon the survivor's objectives, safety considerations, available evidence, and the nature of the violation.

In addition to the remedies discussed in this chapter, migrant workers and their advocates may also pursue broader advocacy strategies aimed at promoting accountability, policy reform, institutional change, and prevention of future violations. Advocacy can operate alongside both judicial and non-judicial remedies and may contribute to addressing structural causes of exploitation that extend beyond an individual case. Because advocacy may operate both as a complementary remedy strategy in individual cases and as a mechanism for addressing systemic drivers of exploitation, it is examined separately and in greater detail in Chapter 4.

The following diagram illustrates how migrant workers may navigate multiple and interconnected remedy pathways in practice, moving between informal, administrative, judicial, and international mechanisms depending on the nature of the violation, the remedies sought, and the circumstances of the case.



Chapter 4: Advocacy and Strategic Engagement as a Pathway to Remedy

In the context of labour migration, advocacy should not be understood merely as a supplementary activity accompanying judicial or administrative proceedings. Rather, it forms an integral component of a broader framework of access to justice, accountability, protection, and effective remedy.

As discussed throughout this Roadmap, access to justice extends beyond the availability of courts or complaint mechanisms. Effective remedy depends upon the existence of practical, institutional, social, and political processes that enable migrant workers to seek protection, assert their rights, obtain recognition of harms suffered, and pursue accountability.

While judicial and administrative mechanisms remain essential components of this framework, many migrant workers face substantial obstacles in accessing them, including financial constraints, limited legal awareness, fear of retaliation, language barriers, immigration-related vulnerabilities, trauma, and the challenges inherent in transnational disputes. In these circumstances, advocacy serves as an important mechanism for operationalizing access to justice by increasing awareness of rights, facilitating referrals, supporting survivor participation, strengthening institutional coordination, and promoting access to remedies and accountability processes.

This understanding is consistent with the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation, which adopt a broad and victim-centred conception of remedy. Under the Basic Principles, victims are entitled not only to equal and effective access to justice, but also to adequate, effective, and prompt reparation for harm suffered. Such reparation may take various forms, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Fundamentally, effective remedies extend beyond judicial decisions or financial awards and encompass measures aimed at restoring dignity, addressing harm, promoting accountability, and preventing future violations.

Within this framework, advocacy may contribute directly to several recognized forms of remedy. It can support restitution by helping workers recover documentation, legal status, employment-related rights, or other entitlements lost through exploitation. Advocacy may facilitate compensation by assisting victims in accessing complaint mechanisms, legal representation, labour authorities, diplomatic channels, and compensation schemes. It may promote rehabilitation through referrals to legal aid, medical care, psychosocial support, shelters, and reintegration services. Advocacy can also contribute to satisfaction by promoting public acknowledgment of violations, amplifying survivors' voices, exposing patterns of abuse, and advancing institutional accountability. Finally, advocacy plays an important role in securing guarantees of non-repetition by supporting reforms to laws, policies, bilateral agreements, institutions, and oversight mechanisms designed to prevent future exploitation.

Accordingly, advocacy should be viewed not as an alternative to formal remedies, but as one of the practical means through which access to justice and effective remedy for migrant workers may be pursued.

WHEN ADVOCACY MAY STRENGTHEN ACCESS TO JUSTICE

- Formal remedies are unavailable, inaccessible, or delayed;
- Formal remedies are ineffective, or incapable of adequately addressing broader structural concerns contributing to exploitation;
- Migrant workers face barriers to accessing courts or administrative mechanisms abroad;
- Abuses involve transnational systems of recruitment and employment operating across multiple jurisdictions;
- Urgent intervention is required to prevent ongoing harm; and
- Patterns of abuse are recurring or widespread.

Advocacy may also be particularly appropriate where individual legal remedies alone are unlikely to address the broader governance failures that enabled violations to occur. In such contexts, advocacy may help expose systemic deficiencies within labour migration systems, including weak regulation of recruitment agencies, inadequate oversight mechanisms, ineffective complaint procedures, gaps in labour protections, poor institutional coordination, or failures in anti-trafficking enforcement.

Immediate advocacy interventions may also be necessary where survivors require protection, public visibility, diplomatic intervention, or engagement with regional and international mechanisms. In practice, advocacy is often most effective when pursued alongside judicial, administrative, diplomatic, and protection-based interventions as part of a coordinated and survivor-centered approach to remedy.

Survivor participation should remain central to advocacy efforts wherever possible and consistent with safety considerations. Survivors possess unique knowledge of the harms suffered, barriers to remedy, and institutional failures that contributed to exploitation. Survivor-led and survivor-informed advocacy can strengthen the legitimacy, relevance, and effectiveness of reform efforts while promoting dignity, agency, and empowerment. At the same time, participation should always be voluntary, informed, and sensitive to risks of retraumatization, stigma, retaliation, or other adverse consequences.

4.1 The Importance of Evidence-Based and Strategic Advocacy

Effective advocacy depends on the availability of credible, accurate, and well-documented information concerning labour migration-related abuses. In the absence of reliable documentation, violations affecting migrant workers may be minimized, dismissed as isolated incidents, or inadequately addressed by relevant institutions. Evidence-based advocacy is therefore essential not only for supporting individual claims, but also for identifying broader structural patterns

requiring institutional intervention and reform. As experience from policy advocacy initiatives demonstrates, credible evidence plays a critical role in influencing decision-makers, strengthening the legitimacy of advocacy efforts, and supporting calls for policy change[143].

As discussed throughout this Roadmap, proper documentation and evidence collection are fundamental to enabling access to justice, supporting labour claims, civil litigation, administrative complaints, compensation mechanisms, referrals to services, and broader accountability efforts. For the same reasons, they also constitute a cornerstone of effective advocacy.

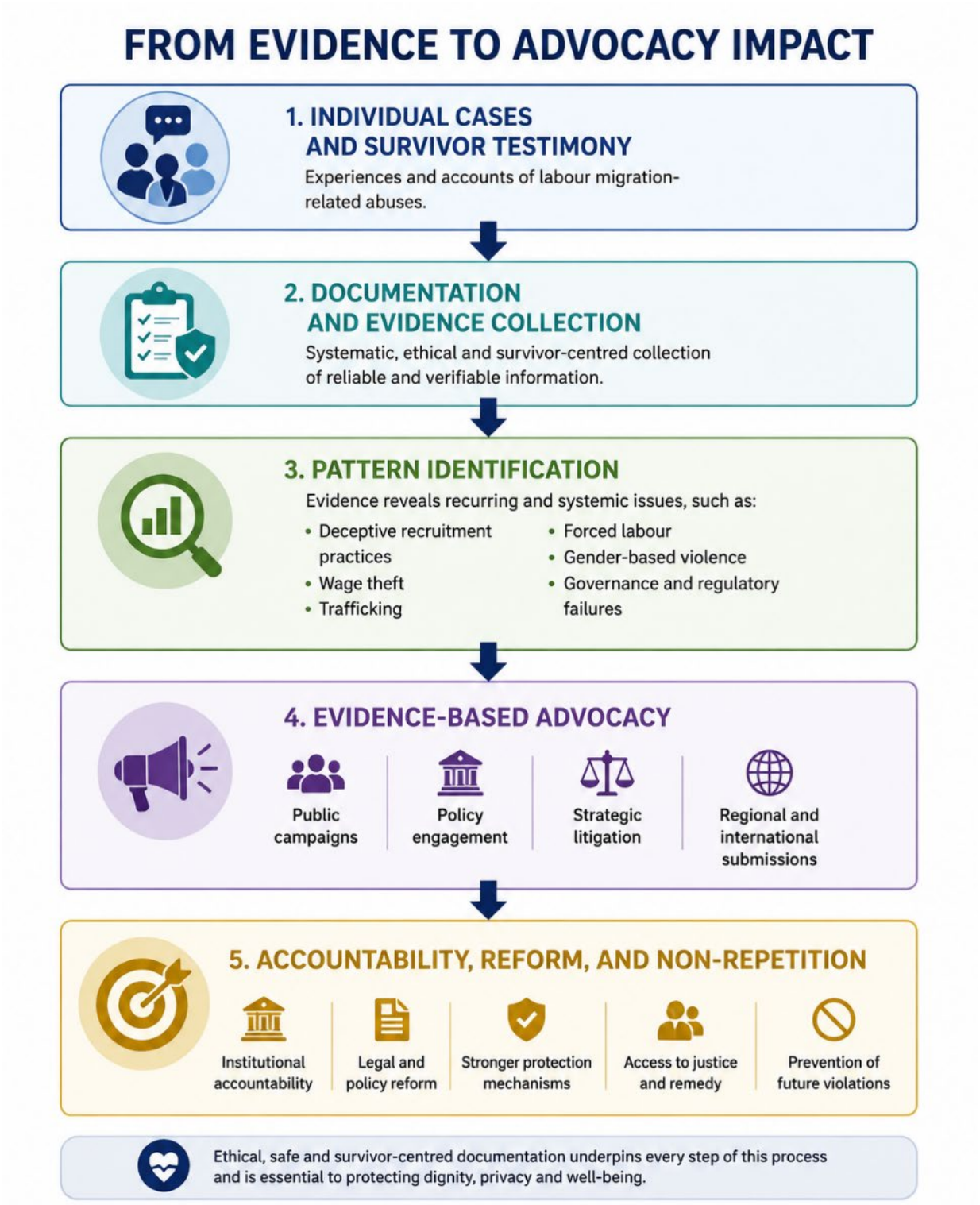
Early documentation is particularly important because opportunities to obtain evidence may diminish rapidly following return, repatriation, settlement, or cessation of contact with employers, recruiters, or witnesses. Evidence strengthens the credibility of reports, public campaigns, policy engagement, and submissions to national, regional, and international mechanisms. Evidence-based advocacy may also help expose recurring patterns involving deceptive recruitment practices, wage theft, trafficking, gender-based violence, forced labour, or failures in labour migration governance systems. By transforming individual experiences into verifiable evidence of broader trends, documentation can support efforts to promote institutional accountability, inform legal and policy reform, strengthen protection mechanisms, and advance guarantees of non-repetition.

Evidence is of particular relevance in relation to regional and international mechanisms. These mechanisms provide opportunities to bring allegations of human rights and labour rights violations before international and regional bodies that can receive complaints and information, investigate alleged abuses, engage with governments, and issue recommendations. Many of these procedures require sufficiently substantiated allegations before action may be taken, while some specifically require evidence demonstrating broader or recurring patterns of violations. For example, the Human Rights Council Complaint Procedure addresses "consistent patterns of gross and reliably attested violations" of human rights. Similarly, submissions to United Nations Special Procedures, treaty body reporting mechanisms, regional human rights bodies, and International Labour Organization procedures often depend heavily on credible documentation capable of demonstrating both individual harm and broader systemic concerns.

Fundamentally, evidence gathering and documentation should remain survivor-centred and ethically grounded. As discussed in the Evidence Chapter of this Roadmap and further elaborated in the "From Evidence to Remedy" Manual, documentation is not merely a technical exercise but a process that carries significant ethical and protection considerations. Migrant workers and survivors of exploitation may face risks linked to trauma, retaliation, stigma, privacy violations, or ongoing vulnerability. Documentation processes should therefore prioritize informed consent, confidentiality, dignity, and the safety and well-being of survivors.

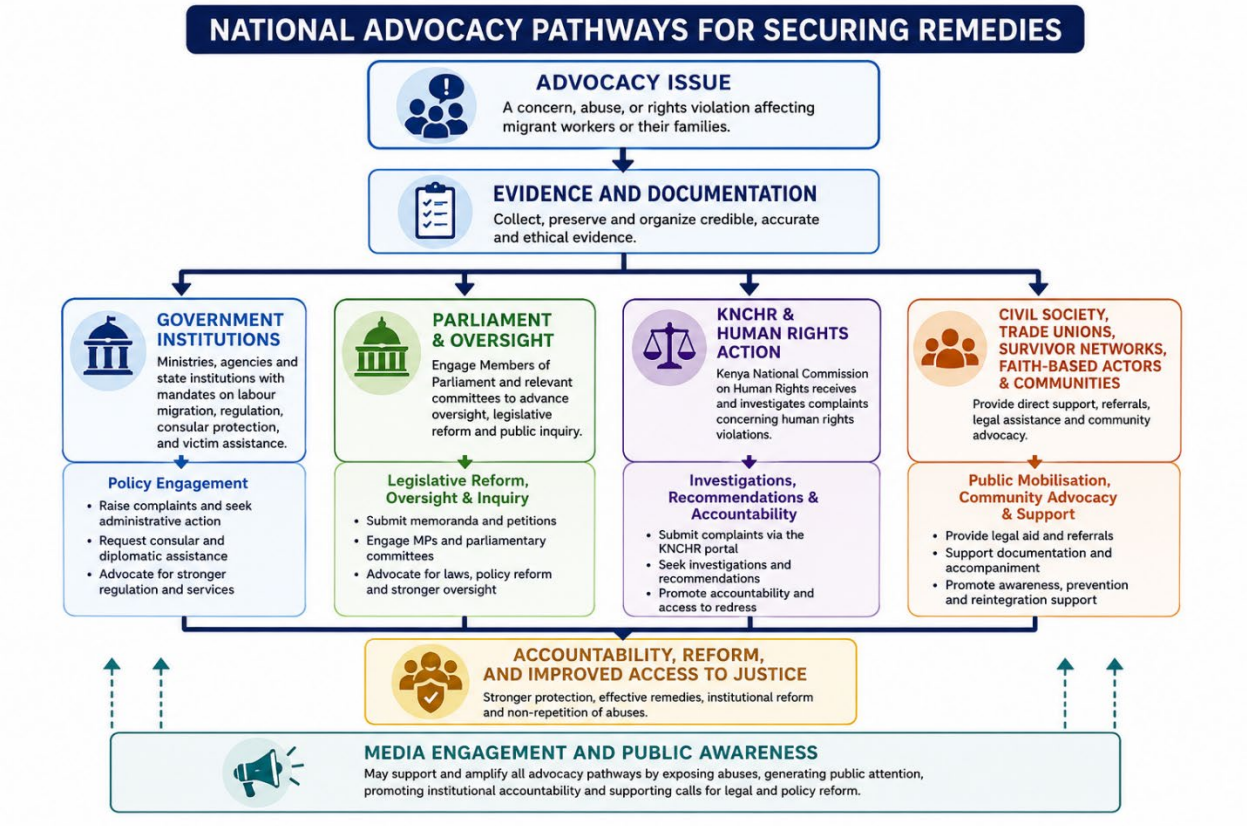
[143] S Kaare, N Chowdhury and V Kazi, *The Power of Evidence in Advocacy: Resource Pack for Trainers on Evidence-Based Policy Advocacy in East Africa* (ODI Global 2007).

Accordingly, evidence-based advocacy forms a strategic component of broader efforts aimed at strengthening accountability, improving labour migration governance, and promoting meaningful access to justice and remedy for migrant workers.



4.2 National Advocacy Pathways for Securing Remedies

Domestic advocacy is often the most immediate and practical means through which migrant workers and their families may seek protection, accountability, and access to remedies within Kenya. It enables engagement with institutions and actors capable of influencing labour migration governance, regulatory oversight, consular protection, victim assistance, and legal or policy reform. Depending on the nature of the issue and the remedies sought, multiple advocacy pathways may be pursued simultaneously, as illustrated below.



Domestic advocacy may first be directed toward relevant state institutions. The Ministry of Labour and Social Protection has primary responsibility for labour migration governance, regulation, and oversight[144]. The National Employment Authority is likewise a key institution, as it regulates private employment agencies and provides official mechanisms for oversight and compliance within the labour migration sector[145]. The Ministry of Foreign and Diaspora Affairs, particularly the State Department for Diaspora Affairs, also plays a key role in protecting the rights and welfare of Kenyan nationals abroad through consular assistance, engagement with foreign authorities, support for distressed migrant workers, and coordination of responses to labour migration-related

[144] Ministry of Labour and Social Protection (Kenya), State Department for Labour and Skills Development.
[145] n43.

crises[146]. Advocacy directed toward these institutions may be particularly relevant where migrant workers require consular intervention, repatriation assistance, diplomatic engagement, or follow-up concerning abuses occurring abroad.

Where trafficking is involved, advocates may additionally engage the Counter-Trafficking in Persons Secretariat, which, through the National Assistance Trust Fund for Victims of Trafficking in Persons, supports victims with return, reintegration, shelter, medical assistance, legal aid, and other necessary support services[147].

Parliamentary advocacy is also a valuable domestic pathway. Article 118 of the Constitution of Kenya requires Parliament to conduct its business openly and facilitate public participation, while Article 119 gives every person the right to petition Parliament to consider matters within its authority, including enactment, amendment, or repeal of legislation.[148] Advocates may submit memoranda during public participation processes, petition Parliament, engage directly Members of Parliament, or seek hearings before relevant parliamentary committees. Relevant parliamentary committees include the National Assembly Committee on Labour, the Diaspora Affairs and Migrant Workers Committee, the Public Petitions Committee, and the Senate Standing Committee on Labour and Social Welfare.[149] These mechanisms may be particularly useful where the remedy sought involves legislative reform, stronger oversight, implementation of safeguards, public inquiry, or review of bilateral labour arrangements.

County governments may also constitute important advocacy targets, particularly in relation to awareness-raising, prevention initiatives, reintegration support, economic empowerment programmes, and implementation of county-level anti-trafficking or migrant protection initiatives.

Advocacy may additionally be pursued through national human rights institutions. As discussed in section 3.3.3, the Kenya National Commission on Human Rights is mandated to receive and investigate complaints concerning alleged human rights violations and to take steps aimed at securing appropriate redress.[150]

Civil society organizations, legal aid providers, trade unions, and survivor networks play an important role in domestic advocacy by supporting referrals, documentation, legal empowerment, community mobilization, and broader reform efforts. Community justice centres are particularly well placed to expand access to justice at the local level.

Religious institutions may provide trusted referral pathways, emergency assistance, psychosocial support, temporary shelter, and community outreach. They may also play an important role in public sensitization, awareness of safe migration and trafficking risks, and support mechanisms.

---

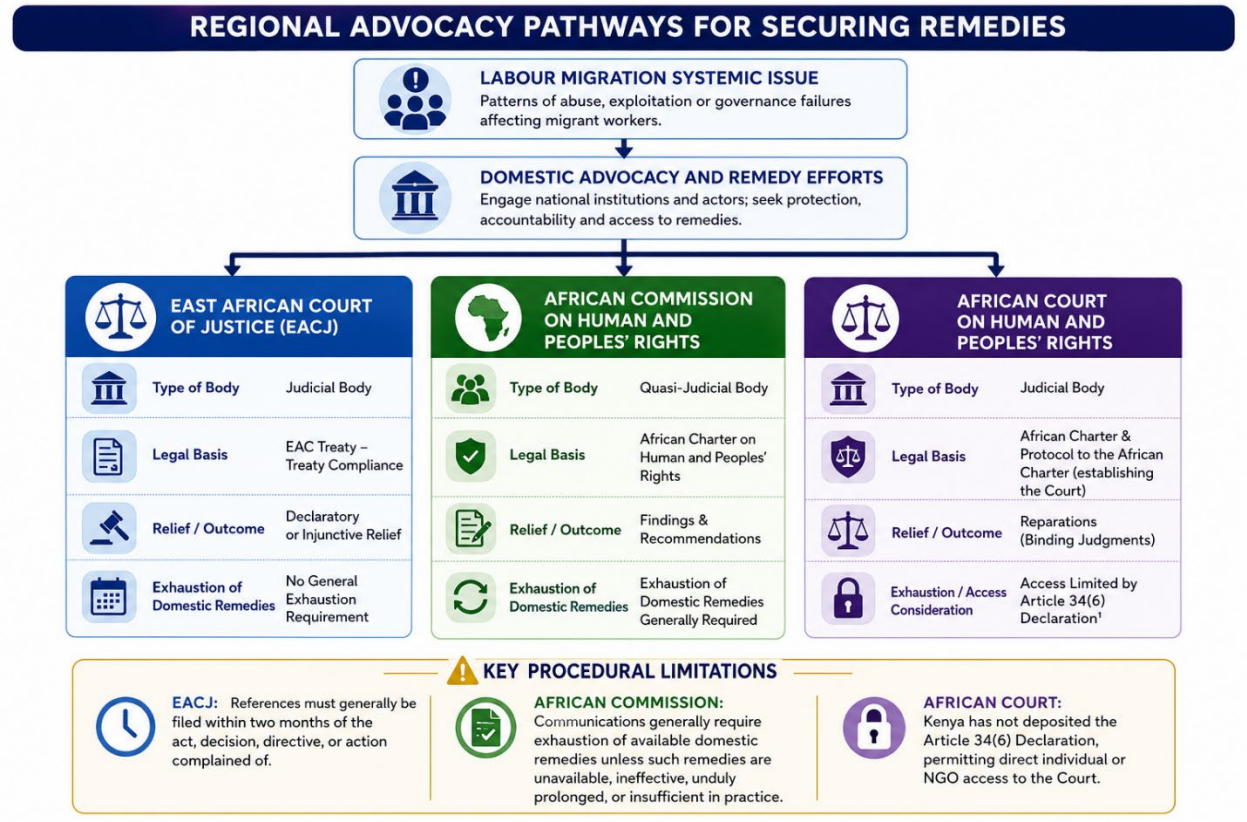
[146] Ministry of Foreign and Diaspora Affairs, State Department for Diaspora Affairs.
[147] National Assistance Trust Fund for Victims of Trafficking in Persons Guidelines.
[148] n17, art 118–119.
[149] National Assembly Standing Orders; Senate Standing Orders.
[150] n130.

Media engagement may support domestic remedies by exposing patterns of abuse, generating public pressure, promoting accountability, and advancing legal and policy reform through public-interest reporting. Survivor safety, privacy, informed consent, and protection from retaliation should remain central whenever media engagement forms part of an advocacy strategy.

4.3 Regional Advocacy Pathways for Securing Remedies

Regional advocacy pathways may be particularly relevant where labour migration-related abuses reveal patterns that extend beyond individual cases and implicate broader failures of labour migration governance, state protection, access to justice, or regional cooperation. For Kenyan migrant workers, regional advocacy is very relevant because migration-related harms often involve cross-border recruitment networks, regional trafficking, common labour mobility challenges, and shared obligations under African and East African human rights and governance frameworks.

These mechanisms do not generally replace domestic remedies, but may complement them, increasing institutional pressure, clarifying state obligations, generating authoritative findings, supporting public acknowledgment of harm, and strengthening guarantees of non-repetition. They may be appropriate where domestic mechanisms have been ineffective, where abuses reveal systemic governance failures, or where regional standards can assist in framing labour migration-related exploitation as a matter of human rights, rule of law, and state accountability. The main regional advocacy pathways available to migrant workers are summarized below.



4.3.1 East African Court of Justice

The East African Court of Justice ("EACJ") is the judicial body of the East African Community ("EAC") and is mandated to ensure adherence to law in the interpretation, application, and compliance with the EAC Treaty[151]. Although the Court does not yet exercise a fully operationalized human rights jurisdiction, the EAC Treaty expressly includes principles of good governance, democracy, rule of law, accountability, transparency, social justice, equal opportunities, gender equality, and the recognition, promotion, and protection of human and peoples' rights[152].

For this reason, the EACJ is central in cases where labour migration-related abuses can be framed as failures by a Partner State to comply with Treaty obligations. Such claims should not be framed simply as free-standing human rights violations, but rather as violations of the EAC Treaty's fundamental and operational principles. This may be relevant where state action or inaction contributes to unsafe labour migration systems, failure to regulate recruitment practices, denial of access to justice, or systemic failures affecting migrant workers within the East African region.

A significant feature of the EACJ is that natural and legal persons resident in a Partner State may bring references before the Court challenging the legality of an act, regulation, directive, decision, or action of a Partner State or Community institution on the ground that it is unlawful or infringes the Treaty[153]. This provides a potential avenue for civil society organizations, workers' associations, or affected individuals to bring regional claims where the factual circumstances fall within the Court's Treaty-based jurisdiction.

However, the EACJ is subject to significant procedural limitations. References by natural or legal persons must be filed within two months of the relevant act, decision, directive, or action complained of, or from the date it came to the knowledge of the complainant[154]. This is one of the shortest limitation periods among regional human rights mechanisms and may present significant challenges in labour migration-related cases, particularly where survivors only discover institutional failures after return, repatriation, or prolonged efforts to obtain assistance.

The EACJ is therefore likely to be most useful where the advocacy objective is not direct compensation for an individual survivor, but rather declaratory or injunctive relief concerning state conduct, regional governance failures, or non-compliance with Treaty obligations. The Court may issue judgments and interim orders, and Partner States are required to take measures necessary to implement judgments of the Court[155]. Accordingly, the EACJ may be strategically appropriate where advocates seek regional recognition of systemic failures, urgent interim protection, or institutional reform connected to labour migration governance.

---

[151] Treaty for the Establishment of the East African Community, art. 23.
[152] ibid art. 6(d).
[153] ibid, art 30.
[154] Ibid, art 30(2).
[155] Ibid, art 38–39.

4.3.2 African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights provides a broader continental, but still regionally significant, pathway for advocacy concerning labour migration-related abuses. Unlike the African Court, the Commission is a quasi-judicial body with promotional, protective, and interpretive functions under the African Charter on Human and Peoples' Rights. It may receive communications alleging violations of the African Charter and may also be engaged through shadow reporting, thematic submissions, requests for measures, and participation by civil society organizations with observer status.

For Kenyan migrant worker cases, the African Commission may be particularly relevant where abuses implicate rights protected under the African Charter, including dignity, equality and non-discrimination, liberty and security of the person, freedom from slavery-like practices, access to justice, family rights, health, and protection of vulnerable groups. Labour migration-related abuses involving trafficking, forced labour, gender-based violence, arbitrary detention, deaths abroad, denial of consular protection, or failure to regulate recruitment agencies may therefore be framed within the broader African human rights system.

Communications before the Commission may be submitted by individuals, groups, or organizations, including on behalf of victims. This may be especially relevant where survivors are unable to bring claims individually due to trauma, financial constraints, fear of retaliation, or practical barriers to participation. The Commission generally requires exhaustion of available domestic remedies unless such remedies are unavailable, ineffective, unduly prolonged, or insufficient in practice, which may be significant in labour migration cases where domestic processes are unduly prolonged, ineffective, or unavailable in practice.

Civil society organizations may also apply for observer status before the Commission. Observer status allows NGOs to engage more systematically with the Commission, including through participation in sessions, access to relevant non-confidential documents, and the possibility of making statements on human rights issues within their mandate[156]. This may be useful for Kenyan organizations seeking to elevate patterns of labour migration-related abuse, trafficking, forced labour, or barriers to remedy within African human rights processes.

The African Commission may therefore be particularly appropriate where the objective is to seek public acknowledgment of systemic rights violations, generate regional pressure on the State, request provisional measures in urgent cases, or strengthen guarantees of non-repetition through recommendations directed at law reform, institutional coordination, survivor protection, and access to remedy.

[156] African Commission on Human and Peoples' Rights, Resolution on the Criteria for Granting and Maintaining Observer Status to Non-Governmental Organizations working on Human and Peoples' Rights in Africa, ACHPR/Res.572 (LXXVII) 2023.

4.3.3 African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights is a judicial body capable of issuing binding judgments and ordering reparations in appropriate cases. In principle, this makes it a potentially significant mechanism for securing remedies in serious human rights cases, including cases involving migrant worker exploitation, trafficking, forced labour, arbitrary detention, or other severe violations.

However, access to the African Court is subject to strict jurisdictional limitations. Individuals and non-governmental organizations may directly bring cases before the Court only where the respondent State has made a declaration under Article 34(6) of the Protocol establishing the Court. According to the African Court, only a limited number of States have made such declarations, and Kenya has not made the Article 34(6) declaration permitting direct individual or NGO access[157].

As a result, Kenyan individuals and NGOs cannot presently bring direct cases against Kenya before the African Court. In practice, access may need to occur indirectly, including through the African Commission, which may refer matters to the Court in appropriate circumstances. For this reason, the African Court should be understood as a significant but procedurally limited regional pathway for Kenyan migrant worker advocacy.

The African Court may be most relevant in cases involving serious or systemic violations where domestic remedies have been exhausted or are unavailable, ineffective, or unduly prolonged, and where the case is capable of being routed through an appropriate institutional pathway. It may also remain a relevant advocacy target in its own right: civil society organizations may advocate for Kenya to deposit the Article 34(6) declaration, thereby expanding future access to judicial remedies at the African regional level.

4.4 International Advocacy Pathways for Securing Remedies

International advocacy pathways may be appropriate where labour migration-related abuses reveal systemic failures, involve transnational patterns, or require pressure beyond domestic and regional institutions. These mechanisms are generally not substitutes for domestic remedies, and many do not issue binding judgments or direct compensation orders. Nevertheless, they can play a central role in generating visibility, strengthening accountability, clarifying state obligations, supporting institutional reform, and advancing satisfaction and guarantees of non-repetition.

Significantly, these mechanisms may be used not only to challenge failures by Kenya to protect migrant workers and ensure access to remedy, but also to address alleged violations committed or facilitated by destination States, and may also be useful where domestic remedies have stalled or inaccessible. The principal international advocacy pathways available to migrant workers and their advocates are summarized below.

[157] Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, arts. 5(3), 34(6); African Court on Human and Peoples' Rights, Basic Information.

GJK
GLOBAL JUSTICE KENYA

4.4 INTERNATIONAL ADVOCACY PATHWAYS FOR SECURING REMEDIES

The principal international advocacy pathways available to migrant workers and their advocates are summarized below.

Mechanism	Who Can Apply?	Exhaustion of Domestic Remedies	Primary Target of the Mechanism	What It Can Achieve
UN SPECIAL PROCEDURES	Individuals, groups, communities, NGOs, and National Human Rights Institutions	Not required	States, intergovernmental organizations, and non-state actors (including businesses)	Communications, urgent appeals, allegation letters, recommendations, and international attention
HRC COMPLAINT PROCEDURE	Individuals, groups of individuals, or NGOs acting with the consent of victims	Generally required	States	Review of consistent patterns of gross violations and international scrutiny
TREATY BODIES	Individuals or groups of individuals (where an individual complaints procedure exists and has been accepted by the State); civil society organizations through alternative or shadow reporting processes	Required for individual communications; not required for reporting and shadow reporting processes	States Parties to the relevant treaty	Views on treaty compliance, recommendations, and remedial measures (including compensation, investigation, release, policy reform, or other corrective action)
ILO MECHANISMS	Workers' organizations and employers' organizations	Not generally required	States	Findings, recommendations, representations, complaints procedures, and Commissions of Inquiry
UN WORKING GROUP ON BUSINESS & HUMAN RIGHTS	Individuals, affected communities, civil society organizations, labour unions, national human rights institutions, intergovernmental entities, and businesses	Not generally required	States and business enterprises	Recommendations on business and human rights, due diligence, grievance mechanisms, remediation systems, and National Action Plans

PRACTITIONER NOTE: International advocacy mechanisms are not mutually exclusive. Depending on the circumstances, the same pattern of abuse may be raised simultaneously through Special Procedures, Treaty Body reporting processes, ILO mechanisms, and domestic advocacy initiatives.

4.4.1 United Nations Special Procedures

The United Nations Special Procedures of the Human Rights Council are independent human rights experts mandated to report and advise on thematic or country-specific human rights issues.

Special Procedures may send communications to States and, in some circumstances, to non-state actors, including businesses, concerning alleged human rights violations. These communications may address individual cases, broader patterns of abuse, draft legislation, policies, or institutional failures. The Special Procedures system is particularly useful because communications do not require exhaustion of domestic remedies and may therefore be used where urgent attention or international pressure is needed before domestic processes have concluded.[158]

In the labour migration context, Special Procedures may be appropriate where survivors remain at risk abroad, where recruitment agencies or employers are alleged to be involved in trafficking or forced labour, where domestic institutions have failed to respond adequately, or where proposed legal reforms may weaken migrant worker protections. Joint communications to multiple mandate holders may be particularly strategic where a case involves overlapping issues such as trafficking, forced labour, gender-based violence, business responsibility, and migrant worker protection.

Although Special Procedures communications do not produce binding judgments or compensation orders, they may contribute to remedy by generating official correspondence, public attention, institutional pressure, clarification of obligations, and recommendations for corrective action. They may therefore support satisfaction and guarantees of non-repetition, while also strengthening domestic advocacy and litigation efforts.

Complaints to Special Procedures may be submitted by individuals, groups of individuals, civil society organizations, communities, or national human rights institutions.[159] Communications may be submitted directly through the Office of the United Nations High Commissioner for Human Rights Special Procedures submission portal.

UN SPECIAL PROCEDURES MANDATES RELEVANT TO LABOUR MIGRATION-RELATED ABUSES

- the Special Rapporteur on Trafficking in Persons, especially Women and Children;
- the Special Rapporteur on Contemporary Forms of Slavery;
- the Special Rapporteur on the Human Rights of Migrants;
- the Working Group on Business and Human Rights; and,
- in appropriate cases, mandates addressing Violence Against Women, Torture, Arbitrary Detention, or Extreme Poverty.

[158] Office of the United Nations High Commissioner for Human Rights, *Special Procedures of the Human Rights Council*.
[159] Office of the United Nations High Commissioner for Human Rights, *Special Procedures of the Human Rights Council*.

4.4.2 Human Rights Council Complaint Procedure

The Human Rights Council Complaint Procedure provides a confidential channel for addressing consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms occurring in any part of the world.[160]

Unlike Special Procedures communications, this mechanism is not primarily designed for urgent individual cases. It is more appropriate where advocates can demonstrate a broader pattern of violations affecting several victims over time. This procedure may therefore be relevant where labour migration-related abuses affecting migrant workers demonstrate repeated failures by state institutions to prevent trafficking, protect migrant workers, investigate deaths or serious abuses abroad, regulate recruitment agencies, provide consular assistance, or ensure access to remedy. Because the procedure requires reliable evidence of consistent patterns, it is particularly dependent on well-documented advocacy submissions.

The Human Rights Council Complaint Procedure is a confidential mechanism that involves multiple stages of review and consideration. As a result, it may take many months before any outcome is reached. It also requires that domestic remedies have been exhausted or that such remedies are ineffective or unavailable. However, where the evidentiary record demonstrates systemic or repeated violations, the procedure provides a higher-level international pathway capable of escalating serious concerns within the United Nations human rights system.

Complaints under the Human Rights Council Complaint Procedure may be submitted by individuals, groups of individuals, or non-governmental organizations acting with the consent of victims[161] against a Member State of the United Nations. Complaints may be submitted through the Office of the High Commissioner for Human Rights complaint portal. They are reviewed through several stages within the Human Rights Council system before possible escalation. In practice, this mechanism is likely to be most effective where advocates can present strong documentation demonstrating recurring violations affecting multiple victims over time and where the objective is broader systemic reform rather than urgent individual intervention.

4.4.3 Treaty Body Reporting and Periodic Review Processes

Kenya is party to several international human rights treaties relevant to labour migration-related abuses, including treaties protecting civil and political rights, economic and social rights, women's rights, children's rights, and freedom from torture, discrimination, slavery, forced labour, and trafficking-related abuse. Treaty body reporting processes allow civil society organizations to submit alternative or shadow reports highlighting gaps in state implementation and recommending concrete reforms.

---

[160] Office of the United Nations High Commissioner for Human Rights, *Human Rights Council Complaint Procedure*.
[161] Office of the United Nations High Commissioner for Human Rights, *Frequently Asked Questions: Human Rights Council Complaint Procedure*.

Where individual complaint procedures are not available or have not been accepted by the State, treaty body reporting remains an important advocacy pathway. Civil society submissions may draw attention to recurring patterns of deceptive recruitment, wage theft, forced labour, trafficking, gender-based violence, barriers to justice, inadequate consular protection, or failures in regulation of recruitment agencies. These submissions may influence concluding observations and recommendations issued to Kenya, which may then be used domestically to support policy reform, legislative advocacy, and institutional accountability.

Treaty body reporting is therefore particularly appropriate where the objective is not immediate individual relief, but broader recognition of systemic gaps and development of authoritative recommendations concerning migrant worker protection and access to remedy.

4.4.4 International Labour Organization Mechanisms

The International Labour Organization ("ILO") provides strategic advocacy pathways in cases involving forced labour, exploitative recruitment, unsafe working conditions, wage theft, or broader failures in labour migration governance. Kenya is a member of the ILO and is bound by several labour conventions relevant to trafficking, forced labour, and worker protection.[162]

One useful mechanism is the representation procedure under Article 24 of the ILO Constitution, through which workers' or employers' organizations may allege that a Member State has failed to observe a ratified convention.[163] In more serious situations, Article 26 provides a higher-level complaints procedure that may result in a Commission of Inquiry.[164]

ILO procedures may be invoked not only in relation to Kenya's compliance with its international obligations, but also in relation to destination countries where migrant workers experience exploitation. For example, in 2025 workers' delegates at the International Labour Conference, including Kenya's representative from COTU, filed a complaint concerning Saudi Arabia's observance of international labour standards relevant to migrant workers[165], illustrating how ILO mechanisms may be used to address labour migration-related abuses occurring outside the worker's country of origin.

ILO standards may also support advocacy concerning ethical recruitment, workplace dignity, rehabilitation, compensation, and protection from retaliation, even where a specific convention has not been ratified. Because many ILO procedures depend on participation by workers'

[162] Constitution of the International Labour Organization; Forced Labour Convention, 1930 (No 29); Abolition of Forced Labour Convention, 1957 (No 105).
[163] Constitution of the International Labour Organization art 24.
[164] Constitution of the International Labour Organization art 26.
[165] International Trade Union Confederation, Trade unions take Saudi Arabia to UN labour body over exploitation and deaths of migrant workers, 2025, June 4. <Trade unions take Saudi Arabia to UN labour body over exploitation and deaths of migrant workers - International Trade Union Confederation> accessed 25 May 2026.

organizations, collaboration with trade unions may be especially relevant in labour migration advocacy.

4.4.5 UN Working Group on Business and Human Rights

The UN Working Group on Business and Human Rights may also be relevant where labour migration-related abuses involve recruitment agencies, private employers, brokers, digital recruitment platforms, or corporate actors operating across borders. Its mandate is grounded in the UN Guiding Principles on Business and Human Rights, including the duty of States to protect against business-related human rights abuse and the responsibility of business enterprises to respect human rights and provide or participate in remedy.

This pathway may be particularly appropriate where abuses arise from private recruitment practices, corporate supply chains, outsourcing arrangements, or failures by businesses to conduct human rights due diligence. Communications and submissions to the Working Group may be used to highlight recruitment-related exploitation, demand stronger remediation systems, and support broader reforms concerning ethical recruitment and corporate accountability.

Although the Working Group does not provide individual compensation, it may contribute to remedy by increasing pressure on private actors and States to adopt effective remediation systems, strengthen due diligence, and prevent recurrence of labour migration-related abuse.

Palermo Protocol

International advocacy concerning migrant worker exploitation may also draw upon the Palermo Protocol, which provides the primary international framework for addressing trafficking in persons.[166] The Protocol defines trafficking through the act, the means, and the purpose of exploitation, and is particularly relevant where labour migration involves deception, coercion, abuse of vulnerability, debt bondage, or forced labour.

A significant feature of the Protocol is that consent becomes legally irrelevant where coercion, deception, or abuse of vulnerability has been used.[167] The Protocol also emphasizes victim protection, including access to shelter, medical care, legal assistance, safe return, and reintegration support.[168]

In Kenya, many of these principles are reflected in the Counter-Trafficking in Persons Act.[169] The Protocol may therefore support advocacy aimed at strengthening victim protection, improving accountability, and ensuring that survivors of trafficking and forced labour are treated as victims requiring assistance rather than punishment.

---

[166] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.
[167] Palermo Protocol art 3(b).
[168] Palermo Protocol arts 6–8.
[169] n33.

Chapter 5: Cross-Cutting Vulnerabilities, Gender, and Access to Justice

5.1 Why Vulnerability Matters for Access to Justice and Effective Remedy

Access to justice and effective remedy cannot be fully understood without examining the vulnerabilities that shape migrant workers' experiences throughout the migration cycle. Vulnerability influences not only the likelihood of exploitation occurring, but also a worker's ability to identify violations, preserve evidence, seek assistance, participate in legal proceedings, and ultimately obtain meaningful remedies.

For the purposes of this Roadmap, vulnerability should not be understood as an inherent characteristic of an individual. Rather, vulnerability arises from structural, legal, economic, social, institutional, and cultural conditions that increase exposure to abuse while simultaneously limiting access to protection and accountability mechanisms.[170]

The concept of vulnerability is particularly important in labour migration because many of the abuses experienced by migrant workers arise precisely from unequal power relationships between workers, recruiters, employers, labour intermediaries, and state institutions. Vulnerability may affect the circumstances under which migration decisions are made, the ability to negotiate employment conditions, access information, retain documentation, seek assistance, report violations, and pursue remedies.[171]

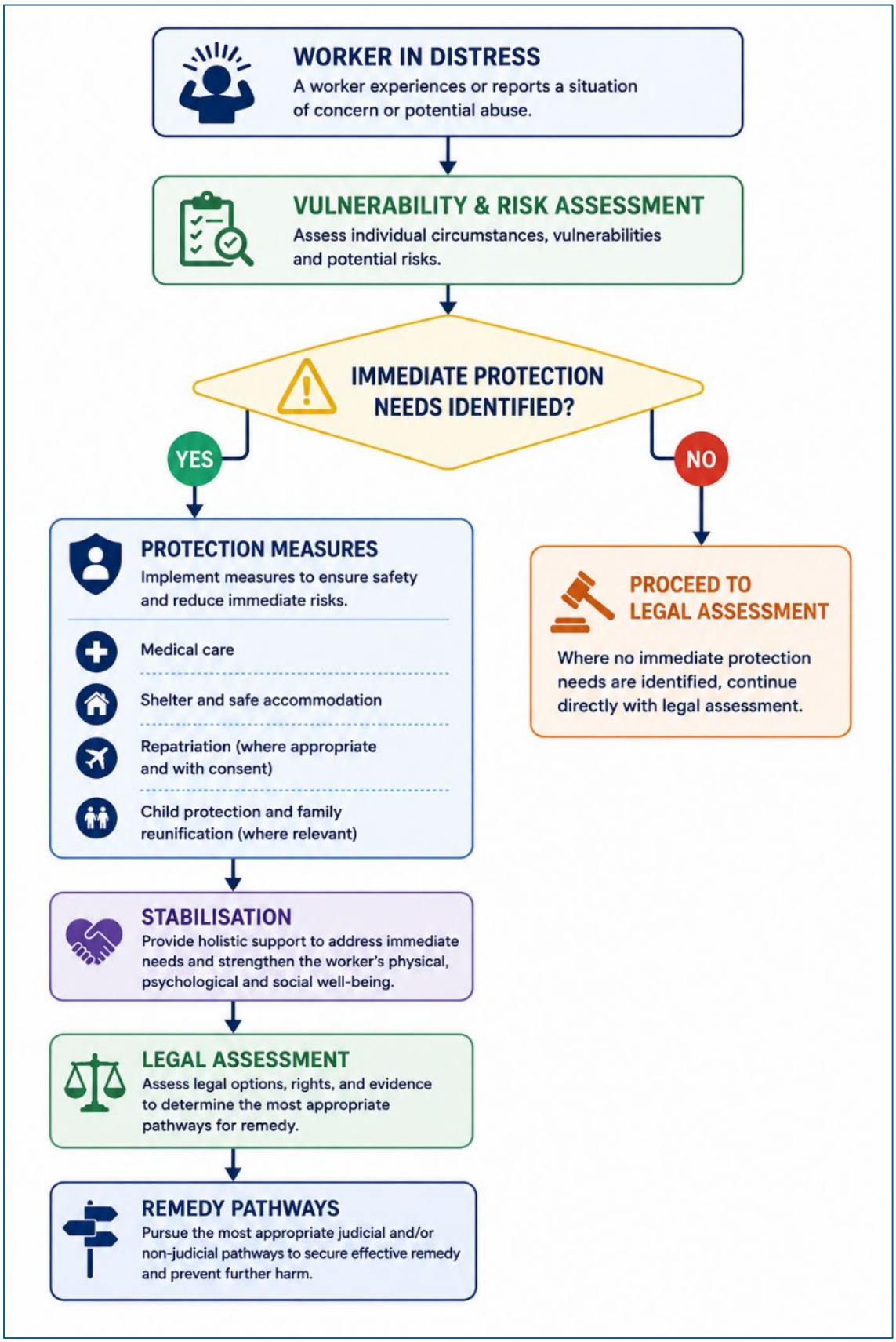
Understanding vulnerability is therefore essential for lawyers, judges, labour officers, law enforcement, investigators, civil society organizations, trade unions, and policymakers engaged in protecting migrant workers' rights. It assists in identifying barriers to justice, understanding evidentiary challenges, assessing trafficking indicators, interpreting coercion and consent, evaluating credibility concerns, determining immediate protection needs, and designing remedies capable of addressing the full extent of harm suffered.

This Roadmap adopts an intersectional approach to vulnerability. Migrant workers rarely experience it through a single factor alone. Rather, vulnerabilities frequently overlap and reinforce one another. Gender, migration status, poverty, disability, age, family responsibilities, literacy, language barriers, rural marginalization, ethnicity, and trafficking experiences often interact to produce heightened exposure to exploitation and reduced access to justice.

Because access to justice rrights ande than the existence of legal remedies, understanding vulnerability is fundamental to ensuring that migrant workers receive appropriate protection, can effectively exercise their rights, and obtain meaningful redress[172]. This often requires a sequential assessment of protection needs, vulnerabilities, and legal options, as illustrated in the figure below.

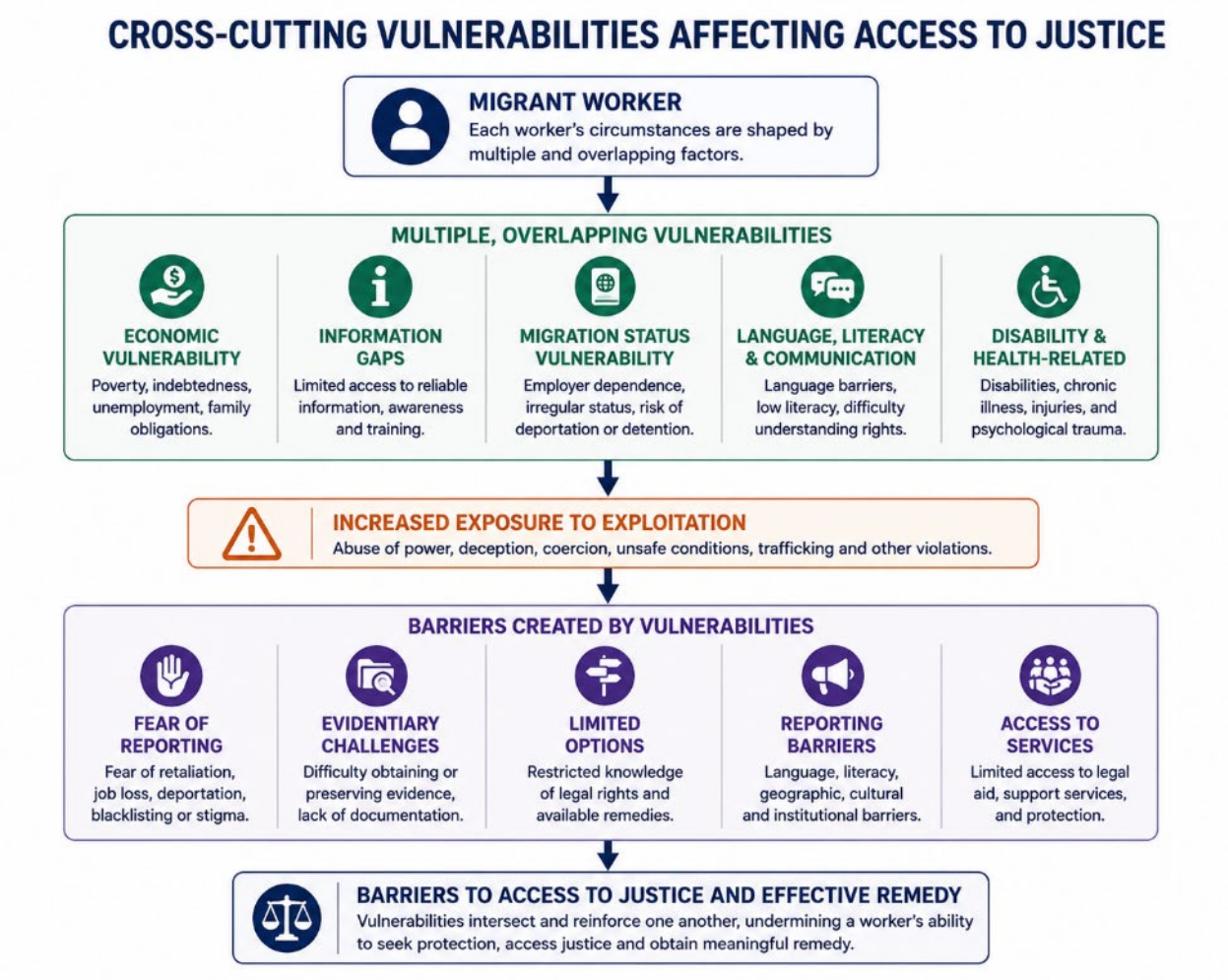
---

[170] Martha Albertson Fineman, 'The Vulnerable Subject and the Responsive State' (2010) 60 Emory Law Journal 251.
[171] United Nations Office on Drugs and Crime (UNODC), *Global Report on Trafficking in Persons 2024* (UN 2024).
[172] International Organization for Migration (IOM), *World Migration Report 2024* (IOM 2024).


WORKER IN DISTRESS
A worker experiences or reports a situation of concern or potential abuse.
VULNERABILITY & RISK ASSESSMENT
Assess individual circumstances, vulnerabilities and potential risks.
IMMEDIATE PROTECTION NEEDS IDENTIFIED?
YES
NO
PROTECTION MEASURES
Implement measures to ensure safety and reduce immediate risks.
Medical care
Shelter and safe accommodation
Repatriation (where appropriate and with consent)
Child protection and family reunification (where relevant)
PROCEED TO LEGAL ASSESSMENT
Where no immediate protection needs are identified, continue directly with legal assessment.
STABILISATION
Provide holistic support to address immediate needs and strengthen the worker's physical, psychological and social well-being.
LEGAL ASSESSMENT
Assess legal options, rights, and evidence to determine the most appropriate pathways for remedy.
REMEDY PATHWAYS
Pursue the most appropriate judicial and/or non-judicial pathways to secure effective remedy and prevent further harm.

5.2 Cross-Cutting Vulnerabilities Throughout the Migration Cycle

The vulnerabilities discussed in this chapter do not operate in isolation. Rather, they frequently overlap and reinforce one another throughout the migration cycle, increasing both exposure to exploitation and barriers to protection, accountability, and remedy. The figure below illustrates how multiple and intersecting vulnerabilities may affect migrant workers' ability to exercise their rights and access justice. While gender remains a particularly significant factor shaping migration experiences and access to remedies, its importance warrants separate and dedicated consideration later in this chapter. The sections that follow therefore examine cross-cutting vulnerabilities that may affect migrant workers of all genders in labour migration contexts.



5.2.1 Economic Vulnerability and the Drivers of Migration

"If a slave ship docked today in Mombasa with a banner saying, 'Slaves required in the West,' you would not have space on that ship."— Senator Okiya Omtatah

"Widespread joblessness has created a culture of exploitation."— Nerima Wako-Ojiwa

Economic insecurity remains one of the primary drivers of labour migration from Kenya. High unemployment rates, underemployment, limited economic opportunities, household poverty, indebtedness, and family obligations frequently compel individuals to seek employment abroad.[173]

The desperation created by unemployment and economic insecurity has been highlighted by public figures and civil society actors across Kenya. Senator Okiya Omtatah's observation regarding the willingness of unemployed individuals to board a hypothetical slave ship reflects the profound economic pressures facing many young Africans. Similarly, civic activist Nerima Wako-Ojiwa has warned that widespread joblessness has fueled a "culture of exploitation" in which individuals may become more susceptible to deceptive promises of employment and migration opportunities.

These observations are particularly relevant from a legal perspective. International anti-trafficking frameworks recognize that exploitation frequently occurs through the abuse of positions of vulnerability. Article 3 of the Palermo Protocol specifically recognizes abuse of a position of vulnerability as a means through which trafficking may occur. Evidence concerning poverty, indebtedness, family dependency, unemployment, lack of educational opportunities, or social exclusion may therefore be relevant in establishing trafficking, coercion, deceptive recruitment practices, or exploitative labour arrangements.[174]

Economic vulnerability may also discourage workers from reporting abuse for fear of losing income required to support dependants, repay debts, or sustain family members who rely on remittances. For many migrant workers, migration represents a collective family investment and a source of hope for entire households.[175] Families may incur debts, sell assets, or make significant financial sacrifices to finance migration. Consequently, workers who return home without savings after experiencing exploitation, illness, injury, trafficking, or unsuccessful employment placements may face stigma, shame, family disappointment, or social exclusion. Such pressures may lead some workers to conceal abuse, delay seeking assistance, or remain in dangerous situations despite serious violations of their rights. [176]

---

[173] International Labour Organization, *The Migrant Recruitment Industry in Kenya* (ILO 2023).
[174] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 (Palermo Protocol) art 3.
[175] UN Human Rights Council, 'Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences' (17 July 2023) UN Doc A/HRC/54/30.
[176] n5.

Reintegration challenges have also been identified as a factor contributing to psychological distress among returnees and, in some cases, may increase vulnerability to re-trafficking, as workers feel compelled to undertake further migration attempts despite previous experiences of exploitation.

Effective access to justice therefore requires not only accountability for violations suffered abroad but also measures that support safe reintegration, psychosocial recovery, and economic empowerment upon return.[177]

5.2.2 Information and Knowledge Vulnerabilities

Despite efforts by the Government of Kenya, the National Employment Authority (NEA), county governments, civil society organizations, and migrant support networks to promote safe migration awareness, significant information gaps remain.[178] Many prospective migrant workers, particularly in remote and marginalized areas, continue to have limited access to reliable information regarding labour rights, recruitment procedures, complaint mechanisms, available support services, and the realities of working abroad. While awareness initiatives have increased, further investment is needed to ensure that information reaches vulnerable communities through accessible formats, including local-language audiovisual materials, community radio programmes, and video-based content suitable for persons with limited literacy.[179]

Pre-departure training constitutes one of the most important safeguards against exploitation because it equips migrant workers with practical knowledge regarding their rights, destination-country laws, complaint mechanisms, consular assistance, documentation requirements, and available protection services. However, recent reforms have reduced the duration of mandatory pre-departure preparation from 26 days to 14 days, raising concerns that workers may receive less training on critical issues.

Additional concerns arise from the decision to permit recruitment agencies to conduct pre-departure training. Because agencies derive financial benefit from deploying workers abroad, a potential conflict of interest exists where the same entity responsible for recruitment is also responsible for informing workers about the risks and challenges associated with migration. Independent, rights-based training delivered by neutral institutions may be better placed to ensure that workers receive objective information regarding both opportunities and risks before departure.[180]

---

[177] International Organization for Migration, *Reintegration Handbook* (IOM 2019).
[178] International Labour Organization, *Protecting the Rights of Migrant Workers: A Shared Responsibility* (ILO 2022).
[179] Kenya National Commission on Human Rights (KNCHR), *Silent No More: A Report on Kenyan Migrant Workers in the Gulf* (KNCHR 2023).
[180] International Labour Organization, *Pre-Departure Orientation Programmes for Migrant Workers* (ILO 2020).

5.2.3 Migration Status Vulnerability

Migration status frequently affects access to justice. Workers whose legal status depends upon a particular employer may become reluctant to report abuse for fear of deportation, detention, blacklisting, loss of employment, or immigration penalties.

Undocumented migrants often face even greater obstacles. Fear of contact with authorities may prevent reporting of serious crimes, labour violations, trafficking, or violence.

Such vulnerabilities may be deliberately exploited by recruiters and employers to maintain control and discourage complaints.[181]

5.2.4 Language, Literacy and Communication Barriers

Language barriers may significantly limit a worker's ability to understand contracts, access services, communicate with authorities, seek legal advice, or participate effectively in legal proceedings.

Literacy challenges may further impede the ability to understand contractual documentation, preserve evidence, or navigate complaint procedures.

Lawyers should ensure that interpretation services and accessible communication methods are available throughout proceedings.[182]

5.2.5 Disability and Health-Related Vulnerabilities

Workers with disabilities, chronic illnesses, psychological trauma, pre-existing medical conditions, or work-related injuries may face additional barriers to protection and remedy[183]. These vulnerabilities may affect access to employment, participation in legal proceedings, access to evidence, credibility assessments, and the availability of appropriate remedies.

Particular attention should be paid to pre-departure medical screening. Medical clearance is intended to ensure that workers are fit for the specific employment for which they are recruited and that any existing health conditions are properly identified, documented, and addressed before departure.[184] In practice, however, concerns have frequently been raised regarding inadequate medical examinations, or situations where medical clearance is issued despite the existence of serious underlying conditions. In some cases, pre-existing illnesses may significantly deteriorate upon arrival due to demanding working conditions, lack of access to healthcare, extreme climatic conditions, psychological stress, or delays in obtaining medical treatment.

---

[181] Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *General Comment No 2 on the Rights of Migrant Workers in an Irregular Situation* (28 August 2013) UN Doc CMW/C/GC/2.
[182] International Labour Organization, *Access to Justice for Migrant Workers* (ILO 2017).
[183] UN Office of the High Commissioner for Human Rights (OHCHR), *The Rights of Migrants with Disabilities* (OHCHR 2021).
[184] Employment Act 2007 (Kenya) ss 34–37.

From an accountability perspective, lawyers should not assume that responsibility lies exclusively with the employer. Where medical screening institutions, recruitment agencies, labour intermediaries, or other actors negligently fail to conduct adequate examinations, falsify results, conceal relevant medical information, or authorize deployment despite known health risks, they may bear legal responsibility for resulting harm. Medical records, fitness certificates, recruitment documentation, and expert medical evidence may therefore become critical in establishing negligence, breach of statutory duties, misrepresentation, or other grounds for liability.

This is particularly important where a worker suffers permanent disability, severe deterioration of a pre-existing condition, psychological injury, or death following deployment that may have been avoided through proper medical assessment and referral before departure.

5.3 Gendered Dimensions of Labour Migration

Labour migration is not gender neutral.[185]

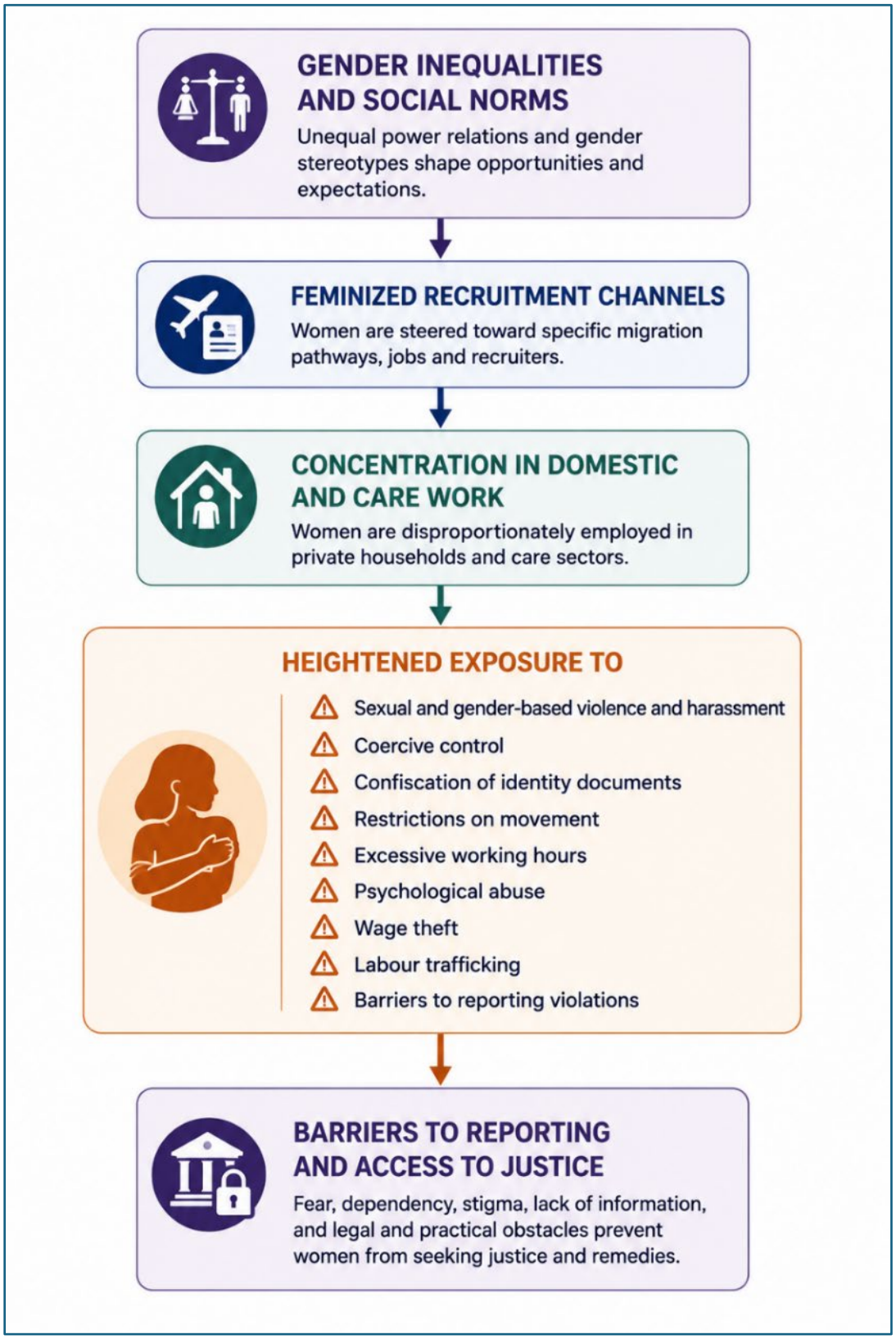
Women and men frequently migrate under different circumstances, enter different sectors of employment, experience different forms of exploitation, and encounter distinct barriers in accessing justice.

In Kenya, labour migration has become increasingly feminized, particularly in relation to migration to Gulf countries and other destinations within the Arab labour migration corridor. Women constitute now at least 53 per cent of Kenyan migrant workers deployed abroad and are heavily concentrated in domestic work, caregiving, hospitality, cleaning services, beauty services, and other feminized sectors of employment[186]. The concentration of women within these sectors reflects broader structural inequalities, unequal access to economic opportunities, gendered labour markets, and persistent social norms associating women with caregiving and domestic responsibilities.[187]

These structural inequalities frequently channel women into domestic and care work, which is often undervalued and performed within private households, increasing exposure to multiple and overlapping forms of harm. These vulnerabilities frequently affect access to evidence, legal assistance, protection mechanisms, and the ability to seek remedies while abuse is occurring.

The figure below illustrates how structural gender inequalities and social norms contribute to the feminization of labour migration, the concentration of women in domestic and care work, and, ultimately, heightened exposure to exploitation and barriers to reporting and access to justice.

[185] International Labour Organization, *Women and Men in the Informal Economy: A Statistical Picture* (ILO 2023).
[186] IOM, IOM Migration Snapshots, International Migration from Kenya (2016-2020).
[187] n16.


GENDER INEQUALITIES AND SOCIAL NORMS
Unequal power relations and gender stereotypes shape opportunities and expectations.
FEMINIZED RECRUITMENT CHANNELS
Women are steered toward specific migration pathways, jobs and recruiters.
CONCENTRATION IN DOMESTIC AND CARE WORK
Women are disproportionately employed in private households and care sectors.
HEIGHTENED EXPOSURE TO
Sexual and gender-based violence and harassment
Coercive control
Confiscation of identity documents
Restrictions on movement
Excessive working hours
Psychological abuse
Wage theft
Labour trafficking
Barriers to reporting violations
BARRIERS TO REPORTING AND ACCESS TO JUSTICE
Fear, dependency, stigma, lack of information, and legal and practical obstacles prevent women from seeking justice and remedies.

5.3.1 The Arab Labour Migration Corridor and Gendered Vulnerabilities

A significant proportion of Kenyan migrant workers, particularly women employed as domestic workers, migrate to countries within the Gulf Cooperation Council (GCC) and the wider Arab region. Lawyers representing migrant workers should be aware that many of these countries regulate labour migration through sponsorship (*Kafala*) systems that tie a worker's immigration status to a sponsoring employer.[188] Although reforms have been introduced in some jurisdictions, these arrangements continue to create significant power imbalances by limiting workers' autonomy and increasing dependence on employers for residence, employment, and mobility. [189]

For women migrant workers, these vulnerabilities are compounded by social and legal norms associated with Male Guardianship systems, under which women require the approval and involvement of a male guardian or sponsor in relation to certain aspects of life, mobility, employment, healthcare, and administrative procedures. As observed by Mariam Diefallah, domestic workers in the Gulf face a "double bind": as migrant workers they are under sponsorship systems, while as women they encounter restrictions associated with gendered power structures[190].

These intersecting systems increase dependence on employers and male authority figures, limit opportunities to seek assistance, and create additional barriers to reporting abuse, accessing healthcare, or pursuing legal remedies. The following examples are drawn from documentation conducted jointly by Global Justice Kenya and Professor Lindsay Harris of the University of San Francisco School of Law Law's International Human Rights Clinic ("USF-IHRC")[191].

EVIDENCE FROM DOCUMENTATION: GENDERED HARMS IN THE SAUDI LABOUR MIGRATION CORRIDOR

- Sexual violence and harassment by employers;
- Denial of access to menstrual hygiene and reproductive health needs;
- Separation from children and family members;
- Restrictions on movement and confiscation of identity documents;
- Denial or delay of access to medical care;
- Gender-specific occupational injuries, including complications linked to previous Caesarean sections; and
- Barriers to reporting violations and accessing remedies.

These findings illustrate how gender, migration status, and employer control may interact to create heightened vulnerability to exploitation and significant barriers to protection, accountability, and access to justice.

[188] International Labour Organization, *Employer-Migrant Worker Relationships in the Middle East* (ILO 2021).
[189] International Trade Union Confederation, *The Kafala System: Modern Slavery in the Gulf* (ITUC 2021).
[190] Maria Diefallah, Not Only Kafala, *Africa is a country*, July 2024. https://africasacountry.com/2024/07/not-only-kafala
[191] Lindsay M. Harris, *The Kafala System Disables Workers. International Disability Law Can Hold Saudi Arabia Accountable*, Just Security, May 20, 2026. https://www.justsecurity.org/139271/kafala-system-disability-law/

Understanding the legal and social frameworks operating in destination countries is therefore essential to effective representation. Access to justice often depends not only on labour laws, but also on immigration regulations, family law provisions, civil registration procedures, criminal laws, and available protection mechanisms. Familiarity with these systems may assist practitioners in identifying barriers to reporting abuse, preserving evidence, securing legal status, accessing shelters and healthcare, facilitating repatriation, and pursuing effective remedies.

5.3.2 Sexual and Gender-Based Violence

Sexual and gender-based violence remains one of the most serious risks faced by women migrant workers and may occur during recruitment, transit, employment, repatriation, or reintegration. Such violence may include sexual harassment, sexual assault, rape, coercive sexual relationships, unwanted touching, verbal abuse, psychological violence, reproductive coercion, intimidation, and threats. These forms of abuse often occur within broader patterns of control, dependency, and unequal power relations that characterize many labour migration contexts.[192]

The risks associated with sexual and gender-based violence may be heightened where women face restrictions on mobility, limited access to independent accommodation, fear of immigration consequences, or social stigma associated with sexual violence and pregnancy. These factors may discourage reporting, delay disclosure, or prevent survivors from seeking assistance altogether. For legal practitioners, such circumstances are important when assessing credibility, understanding evidentiary gaps, evaluating delays in reporting, and designing survivor-centred approaches to investigation and litigation.[193]

Recognizing the unique challenges associated with these cases, Kenya has established specialized Sexual and Gender-Based Violence Courts that adopt trauma-informed approaches aimed at reducing re-traumatization and promoting survivor participation, dignity, privacy, and safety. These developments provide useful guidance for migration-related proceedings and underscore the importance of gender-sensitive and survivor-centred justice processes.

5.3.3 Reproductive Vulnerabilities and Pregnancy-Related Harm

Women migrant workers may face harms directly linked to pregnancy, reproductive health, caregiving responsibilities, and family status. While often overlooked within traditional labour rights frameworks, these harms may have profound implications for protection, access to justice, and long-term recovery.

Documentation conducted by the USF-IHRC with the support of Global Justice Kenya has highlighted several gender-specific forms of harm experienced by Kenyan women migrant

[192] UN Women, *Addressing Violence against Women Migrant Workers* (UN Women 2020).
[193] Committee on the Elimination of Discrimination against Women, *General Recommendation No 33 on Women's Access to Justice* (3 August 2015) UN Doc CEDAW/C/GC/33.

workers in Saudi Arabia[194]. These have included denial of access to menstrual hygiene products and reproductive healthcare, separation from children, denial or delay of medical treatment, and occupational injuries linked to previous pregnancies or childbirth. In several documented cases, women who had previously undergone Caesarean sections reported serious physical complications associated with the demands of heavy domestic work.

The documentation initiative has also revealed the long-term consequences of these harms. Some women returned to Kenya with children born abroad and faced significant difficulties obtaining identity, nationality, and travel documentation for those children. Others experienced prolonged family separation, uncertainty regarding the whereabouts or legal status of their children, and substantial emotional and financial burdens associated with reunification efforts. These experiences demonstrate that labour migration-related exploitation may generate harms extending well beyond the employment relationship itself, affecting family unity, child protection, legal identity, and long-term social and economic well-being.

Particular challenges may arise when migrant workers become pregnant while abroad. In many Arab and Gulf countries, legal and administrative frameworks governing family relations, birth registration, immigration status, and nationality may create significant obstacles for women who are unable to establish a legally recognized marital relationship or obtain the cooperation of the child's father. As widely documented, hundreds of Kenyan women in Saudi Arabia have faced serious difficulties obtaining birth registration, nationality documentation, and travel documents for children born in the Kingdom, leaving many women and children unable to regularize their status or return home.

Although significant repatriation efforts have enabled many women to return to Kenya, the underlying challenges often persist. Some women remain separated from children who remain abroad, while others continue to face barriers to family reunification, civil registration, and access to documentation. Lawyers should therefore consider not only labour rights violations but also issues relating to nationality, civil registration, child protection, immigration status, family reunification, and consular assistance when assessing available remedies and protection measures.

5.4 International and Regional Standards

Under Articles 2(5) and 2(6) of the Constitution of Kenya, general rules of international law and treaties ratified by Kenya form part of Kenyan law. [195]International and regional human rights instruments should therefore not be viewed merely as advocacy tools but as important sources of law capable of informing judicial interpretation, filling legislative gaps, strengthening legal

[194] University of San Francisco School of Law, *University of San Francisco Law Clinic Files 15 Landmark UN Complaints on Behalf of Kenyan Workers Disabled Under Saudi Arabia's Kafala System*, Press Release, April 28, 2026.
[195] Constitution of Kenya 2010 arts 2(5) and 2(6).

arguments, and guiding the development of appropriate remedies. In addition to treaty provisions themselves, practitioners may find it useful to rely on General Recommendations of Treaty Bodies, General Comments, reports of Special Rapporteurs, and relevant international and regional jurisprudence as persuasive authority.

Particularly relevant instruments for the protection of women migrant workers that may be invoked before Kenyan courts and adjudicative bodies are outlined below. Taken together, these instruments provide a comprehensive normative framework for addressing exploitation and violence, challenging structural inequalities, advancing gender equality, promoting accountability, and securing access to justice and effective remedies for women migrant workers.

5.4.1 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The principal international treaty addressing discrimination against women. It may be relied upon in cases involving gender discrimination, violence against women, unequal treatment in employment, barriers to access to justice, reproductive rights, trafficking, and State obligations to protect women from exploitation and abuse. CEDAW has played an important role in advancing women's rights in Kenya, including strengthening protections against gender-based violence, promoting equality in marriage and family relations, reinforcing women's inheritance and property rights, supporting protection from workplace discrimination, and advancing reproductive rights and access to justice[196]. Of particular relevance are CEDAW General Recommendation No. 26 on women migrant workers and General Recommendation No. 33 on women's access to justice[197].

5.4.2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)

Ratified by Kenya, the Protocol provides extensive protections relating to equality, dignity, bodily integrity, reproductive health, protection from violence, economic and social rights, and access to justice. It is particularly relevant in cases involving sexual and gender-based violence, reproductive harms, discrimination, harmful practices, and violations of women's autonomy and dignity. [198]

5.4.3 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)

This Convention provides important protections for women migrant workers throughout the migration cycle, including protection from discrimination, violence, exploitation, arbitrary

[196] CEDAW: Fact Sheet, American Civil Liberties Union, 2010, April 29. <https://www.aclu.org/documents/cedaw-fact-sheet >accessed 25 May 2026.
[197] CEDAW General Recommendation No. 33, paras. 1–15.
[198] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) (Maputo Protocol).

confiscation of documents, and barriers to justice. The Convention contains specific protections relating to family unity, access to justice, equality before the courts, consular assistance, and the protection of migrant workers' family members, making it particularly relevant in cases involving family separation, children born abroad, access to healthcare, repatriation, and other gender-specific challenges frequently faced by women migrant workers.[199]

5.4.4 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)

Particularly relevant in cases involving deceptive recruitment, abuse of vulnerability, forced labour, debt bondage, sexual exploitation, and human trafficking. The Protocol recognizes that consent is legally irrelevant where coercion, deception, fraud, abuse of power, or abuse of a position of vulnerability has been used to obtain a person's exploitation. Recognizing that women and girls are disproportionately affected by certain forms of trafficking and exploitation, the Protocol also emphasizes victim protection, assistance, recovery, and measures aimed at addressing the particular vulnerabilities of women trafficked for labour or sexual exploitation. [200]

5.4.5 International Covenant on Civil and Political Rights (ICCPR)

Provides protection against slavery, servitude, forced labour, arbitrary detention, cruel, inhuman or degrading treatment, discrimination, and violations of personal liberty and security. These protections are particularly relevant for women migrant workers who experience confinement, passport confiscation, sexual and gender-based violence, restrictions on movement, or other forms of coercion and abuse within the employment relationship. [201]

5.4.6 International Covenant on Economic, Social and Cultural Rights (ICESCR)

Protects the rights to just and favorable conditions of work, fair remuneration, health, social security, and an adequate standard of living. For women migrant workers, the Covenant is particularly relevant in addressing discrimination in employment, unequal remuneration, occupational health and safety, access to healthcare, sexual and reproductive health, maternity-related protections, and the economic and social consequences of labour exploitation and abuse.[202]

---

[199] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3.
[200] Palermo Protocol (n 8).
[201] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
[202] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

5.4.7 ILO Convention No. 189 concerning Decent Work for Domestic Workers

This landmark Convention recognizes that domestic work is work and that domestic workers are entitled to the same fundamental labour protections as other workers. Particularly relevant to migrant domestic workers are its provisions on protection from abuse, violence and harassment; regulation of recruitment agencies; protection against confiscation of passports and identity documents; fair terms of employment; decent working and living conditions; and equal treatment in relation to wages, working hours, rest periods, occupational safety, and social protection. From a litigation perspective, the Convention is especially useful because it requires States to ensure effective access to courts, tribunals, and dispute resolution mechanisms (Article 16), as well as accessible complaint procedures, labour inspections, and enforcement mechanisms to protect domestic workers from exploitation (Article 17). These provisions may provide persuasive authority in cases involving exploitative recruitment, document retention, unlawful confinement, denial of wages, excessive working hours, violence, harassment, and barriers to justice. Although Kenya has not yet ratified Convention No. 189, the ratification process has advanced significantly and has already undergone public participation and stakeholder consultations, making it an important emerging benchmark for the protection of domestic workers in Kenya.[203]

5.4.8 ILO Convention No. 190 concerning Violence and Harassment in the World of Work

The first international instrument to recognize the right of every person to a world of work free from violence and harassment, including gender-based violence and sexual harassment. While Kenya has not yet formally ratified the Convention, the ratification process has progressed through stakeholder engagement and public participation. Convention No. 190 therefore provides valuable persuasive authority for courts and practitioners and may assist in interpreting constitutional, labour, and human rights protections relating to workplace violence, sexual harassment, psychological abuse, dignity, equality, and safe working environments. It is particularly relevant in cases involving women migrant workers employed in isolated and unregulated workplaces such as private households.[204]

5.4.9 African Charter on Human and Peoples' Rights

Guarantees the rights to dignity, equality, non-discrimination, liberty, physical integrity, fair working conditions, and access to effective remedies. The Charter is particularly relevant in cases involving violence against women, exploitation, trafficking, degrading treatment, discrimination,

[203] ILO Convention concerning Decent Work for Domestic Workers (No 189) (adopted 16 June 2011, entered into force 5 September 2013).
[204] ILO Convention concerning Violence and Harassment in the World of Work (No 190) (adopted 21 June 2019, entered into force 25 June 2021).

and failures by States to exercise due diligence in protecting individuals from abuse. It has frequently been relied upon by Kenyan courts and regional human rights bodies and remains an important tool in strategic litigation aimed at protecting the rights, dignity, and equality of women migrant workers.[205]

5.4.10 Convention on the Rights of the Child (CRC)

Particularly relevant where labour migration cases involve children born abroad, family separation, nationality disputes, birth registration, child protection concerns, or the best interests of the child.[206] The Convention may be especially important in cases involving Kenyan children born overseas who face obstacles in obtaining nationality documentation, legal recognition, or repatriation.

5.8 Towards Gender-Transformative Access to Justice

A gender-transformative approach to access to justice recognizes that women do not experience labour migration, exploitation, violence, or justice systems in the same way as men. It acknowledges that gender inequality, discrimination, social norms, economic dependency, and unequal power relations often shape both women's exposure to abuse and their ability to obtain effective remedies. A gender-transformative approach therefore seeks not only to respond to individual violations, but also to address the structural barriers and discriminatory conditions that prevent women from accessing justice on equal terms.

International human rights bodies increasingly recognize that access to justice must be understood as a transformative process rather than merely access to courts. The CEDAW Committee has emphasized that effective access to justice possesses an emancipatory and transformative function, enabling women not only to seek redress for violations but also to challenge the discriminatory structures that produce and sustain inequality. Similarly, the United Nations Working Group on Business and Human Rights has described gender-transformative remedies as remedies capable of addressing discriminatory power relations, gender stereotypes, and systemic inequalities that underpin violations against women[207].

From a practical perspective, a gender-transformative approach requires lawyers and justice actors to identify and address the barriers that women may encounter throughout the justice process. These may include economic dependency, caregiving responsibilities, limited access to information or legal representation, language and communication barriers, fear of stigma or retaliation, under-reporting of sexual and gender-based violence, gender stereotypes affecting

[205] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217.
[206] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.
[207] Aleydis Nissen, Gender-Transformative Remedies for Women Human Rights Defenders, Business and Human Rights Journal (2023), 8: 369–402.

credibility assessments, and forms of intersectional discrimination linked to migration status, disability, age, ethnicity, pregnancy, marital status, or socioeconomic circumstances. Addressing these barriers may require measures that extend beyond traditional legal representation, including psychosocial support, accommodation of caregiving responsibilities, survivor-centred evidence collection, accessible communication methods, and coordinated referral pathways.

GENDER-TRANSFORMATIVE APPROACHES IN PRACTICE: AN EXAMPLE FROM A COLLABORATIVE DOCUMENTATION INITIATIVE

The Global Justice Kenya–USF-IHRC documentation initiative provides a practical illustration of how gender-transformative approaches to justice can be operationalised in practice. The initiative is survivor-led and seeks to centre the voices, experiences, priorities, and agency of Kenyan women migrant domestic workers who have experienced abuse and exploitation in Saudi Arabia, through in-depth interviews and sworn declarations. To date, the initiative has supported the collection of over 50 sworn declarations, creating survivor-generated evidence capable of documenting harms, preserving testimony, establishing chronology, and supporting future accountability efforts.

The initiative also demonstrates the importance of looking beyond domestic remedies alone. In many destination countries, significant procedural and practical barriers may prevent women migrant workers from accessing complaint mechanisms or obtaining effective redress. Evidence has been used to support 15 communications under the Convention on the Rights of Persons with Disabilities (CRPD) on behalf of affected women, while is also informing engagement with other international accountability mechanisms, including treaty bodies, special rapporteurs, and working groups. These processes help create an independent record of violations, generate international scrutiny, and preserve pathways for accountability where domestic systems prove inaccessible, ineffective, or unavailable to women.

Importantly, the initiative reflects a strategic and multi-pronged approach to gender justice. Individual cases are treated not only as opportunities to secure remedies for survivors, but also as sources of evidence capable of revealing broader patterns of discrimination, exploitation, gender-based violence, and institutional failures affecting women migrant workers. In this respect, survivor-centred documentation serves both immediate and long-term objectives, aimed at addressing the gendered drivers of exploitation and preventing future harm.

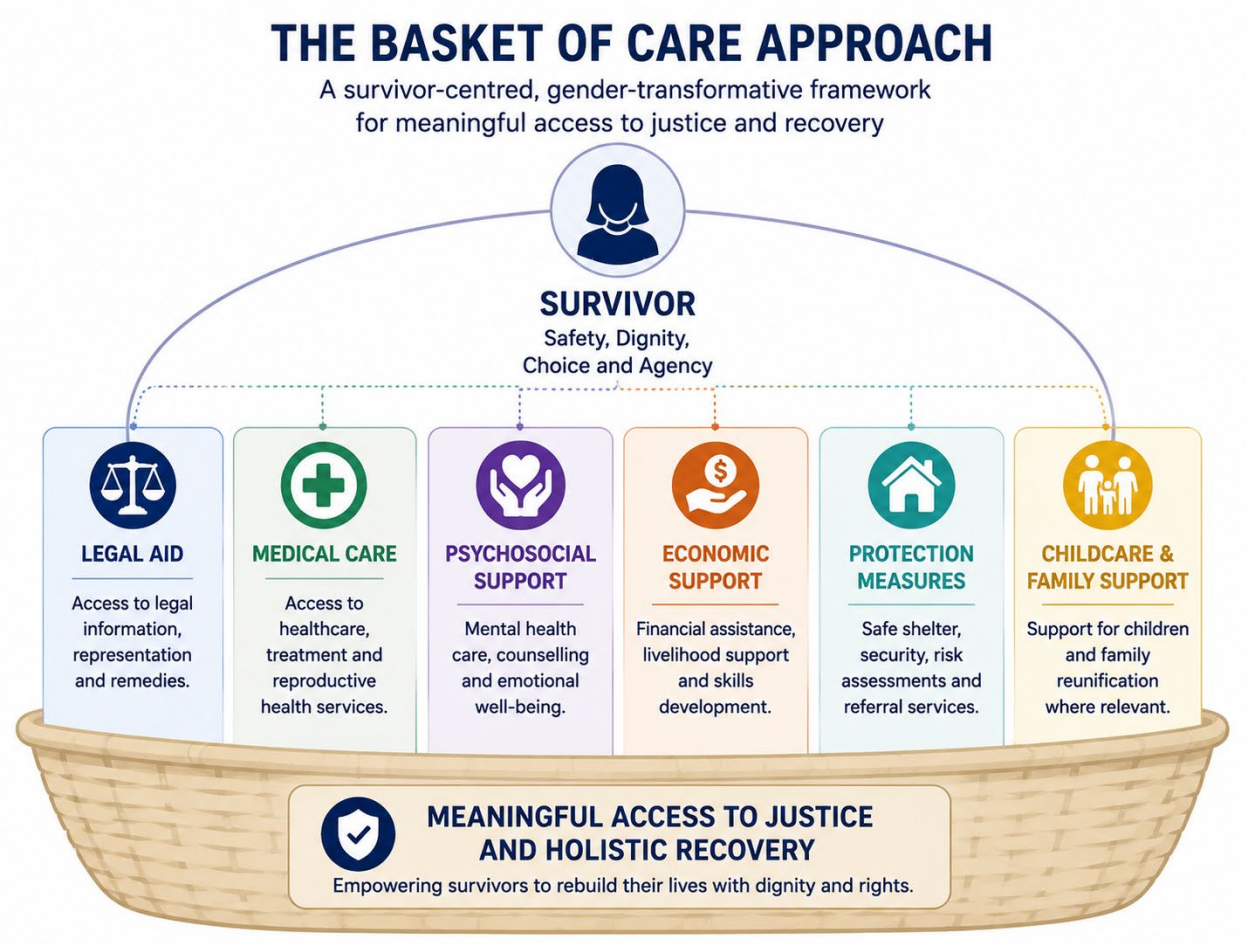
Research consistently demonstrates that discriminatory laws, gendered social roles, economic marginalization, social stigma, and unequal power relations continue to shape women's experiences of justice. Reduced control over financial resources, caregiving responsibilities, limited mobility, and under-representation within decision-making structures may further restrict women's ability to access and effectively engage with justice mechanisms.

Ultimately, a gender-transformative approach to access to justice requires moving beyond a narrow focus on dispute resolution or compensation alone. It requires recognising women migrant workers as rights holders and agents of change, addressing the structural inequalities that contribute to exploitation and exclusion, and ensuring that justice processes contribute to accountability, empowerment, institutional reform, and the prevention of future harm. While individual remedies remain essential, transformative justice seeks to ensure that the conditions that enabled the violation are also challenged and, where possible, changed.

5.8.1 Holistic and Survivor-Centred Remedies: The "Basket of Care" Approach

For many survivors, meaningful access to justice cannot be separated from access to support services. Legal remedies alone may be insufficient if survivors continue to face trauma, economic insecurity, homelessness, family stigma, disability, childcare responsibilities, or safety concerns.

A survivor-centred and gender-responsive approach therefore requires what is often described as a "basket of care": a coordinated package of services designed to address the multiple and intersecting needs of survivors alongside legal proceedings, as illustrated in the figure below.



This holistic approach is particularly important for migrant workers whose vulnerabilities frequently extend beyond the immediate legal violation. Women migrant domestic workers, trafficking survivors, persons with disabilities, survivors of gender-based violence, and workers experiencing severe exploitation often face multiple and intersecting barriers that affect their ability to access justice. Without adequate support, many individuals may be unable or unwilling to participate in investigations or legal proceedings, may abandon claims due to economic hardship, or may become vulnerable to further exploitation, re-trafficking, homelessness, social exclusion, or other forms of harm.

A survivor-centred and gender-responsive justice framework therefore recognises that access to remedy requires more than a favourable judgement. It requires creating the conditions that allow migrant workers to safely claim their rights, participate effectively in accountability processes, recover from harm, rebuild their lives, and exercise agency throughout the pursuit of justice.

More broadly, cross-cutting vulnerabilities and gendered inequalities shape every stage of the migration process and profoundly influence access to justice. Understanding these realities is therefore essential for effective legal representation, evidence collection, victim protection, accountability, and remedy. For lawyers and other justice actors, vulnerability analysis is not a peripheral consideration but a practical tool that assists in identifying violations, understanding barriers to reporting, interpreting evidence, assessing protection needs, and securing remedies that adequately reflect the full range of harm suffered.

By integrating vulnerability analysis, international human rights standards, victim-centred protections, trauma-informed approaches, and gender-transformative justice principles into legal practice, justice actors can contribute to a labour migration system that promotes accountability, dignity, equality, and meaningful access to remedy for all migrant workers.

6. Towards Effective Access to Justice for Migrant Workers

Labour migration offers important opportunities for employment, income generation, skills development, and social mobility. Nevertheless, many migrant workers continue to encounter significant barriers in exercising their rights and obtaining effective remedies when abuse occurs. Legal protections alone are insufficient if migrant workers cannot access information, navigate institutions, obtain support services, access justice and enforce their rights in practice.

This Roadmap has sought to provide a practical framework for understanding and navigating the diverse avenues of remedy available to Kenyan migrant workers. These avenues include judicial proceedings, administrative complaints, non-judicial mechanisms, advocacy initiatives, and regional and international accountability processes. Rather than operating in isolation, these frequently interact and complement one another.

A central lesson emerging throughout this Roadmap is the importance of early identification, documentation, and preservation of evidence. Whether pursuing compensation, challenging unlawful recruitment practices, seeking rehabilitation services, advancing strategic litigation, or engaging international mechanisms, effective remedies frequently depend upon the availability of reliable evidence capable of substantiating violations and supporting accountability efforts.

The Roadmap has also highlighted that access to justice cannot be understood through a purely legal lens. Economic hardship, gender inequality, disability, trauma, language barriers, migration status, family responsibilities, and other intersecting vulnerabilities may significantly affect a migrant worker's ability to seek protection and enforce rights. Remedy systems must therefore be survivor-centred, trauma-informed, gender-responsive, and accessible if they are to provide meaningful protection and redress while addressing the barriers that often prevent rights from being realised.

Ultimately, effective remedies serve not only to address past harm but also to prevent future violations. Accountability contributes to safer migration systems by strengthening compliance, exposing abusive practices, encouraging institutional reform, and increasing the cost of exploitation. Access to justice is therefore both a mechanism of individual redress and a tool for broader social change.

The challenge moving forward is not simply to identify available remedies, but to ensure that they remain accessible, coordinated, adequately resourced, and responsive to the realities faced by migrant workers and their families. By strengthening documentation, legal representation, institutional cooperation, portable justice mechanisms, survivor participation, and accountability mechanisms, stakeholders can help transform rights guaranteed on paper into remedies realised in practice. In doing so, they can contribute to a labour migration system that is safer, fairer, and more responsive to the rights and dignity of migrant workers.

Bibliography

1. African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217.
2. African Commission on Human and Peoples' Rights, *Resolution on the Criteria for Granting and Maintaining Observer Status to Non-Governmental Organizations Working on Human and Peoples' Rights in Africa*, ACHPR/Res.572 (LXXVII) 2023.
3. African Development Bank, A Okara, M Boly, A Simpasa and C Chuku, *Unlocking Africa's Potential: Making Remittances Work for Development* (Working Paper Series No 386, 2025).
4. Africanews, 'Russia Has Taken "Over 1,000" Kenyans to Ukraine: Intelligence Report' (2 April 2026). <https://www.africanews.com/2026/02/19/russia-has-taken-over-1000-kenyans-to-ukraine-intelligence-report/ > accessed 20 May 2026.
5. Afrobarometer, 'Most Kenyan Youth See Government as Failing on Their Top Priorities'. <https://www.afrobarometer.org/publication/ad988-most-kenyan-youth-see-government-as-failing-on-their-top-priorities/ >Accessed on May 20, 2026.
6. Aleydis Nissen, 'Gender-Transformative Remedies for Women Human Rights Defenders' (2023) 8 *Business and Human Rights Journal* 369–402.
7. American Civil Liberties Union, *CEDAW Fact Sheet* (29 April 2010).
8. Andrew Muma and Charles Kanjama t/a Muma & Kanjama Advocates & Others v Deloitte & Touche East Africa & 5 Others [2020] KEHC 10059 (KLR).
9. Arbitration Act (Cap 49, Laws of Kenya).
10. Business Daily Africa, 'Kenyans in Diaspora Are Key to Economic Growth Agenda'. <https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/kenyans-in-diaspora-are-key-to-economic-growth-agenda-5286728> accessed 20 May 2026.
11. Central Organization of Trade Unions (COTU-K), *All Workers, One Voice*.
12. Chartered Institute of Arbitrators (Kenya Branch), *Alternative Dispute Resolution Practice Guidelines*.
13. Civil Procedure Act (Cap 21, Laws of Kenya).
14. Committee on the Elimination of Discrimination against Women, *General Recommendation No. 33 on Women's Access to Justice* (3 August 2015) UN Doc CEDAW/C/GC/33.
15. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *General Comment No. 2 on the Rights of Migrant Workers in an Irregular Situation* (28 August 2013) UN Doc CMW/C/GC/2.
16. Constitution of Kenya, 2010.
17. Constitution of the International Labour Organization.
18. Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.
19. Counter-Trafficking in Persons Act, 2010.
20. County Assembly of Kisumu & 2 Others v Kisumu County Assembly Service Board & 6 Others [2015] eKLR.

21. East African Community, *Treaty for the Establishment of the East African Community*.
22. Employment Act, 2007.
23. Employment and Labour Relations Court Act, 2011.
24. Evidence Act (Cap 80, Laws of Kenya).
25. Fair Administrative Action Act, 2015.
26. Fatal Accidents Act (Cap 32, Laws of Kenya).
27. Fisher R, Ury W and Patton B, *Getting to Yes: Negotiating Agreement Without Giving In* (3rd edn, Penguin 2011).
28. Francis Njuguna Kagunda & Another v Republic [2022] eKLR.
29. Geoffrey Mutemi Manzi v Republic [2021] eKLR.
30. Global Alliance Against Traffic in Women, *Access to Justice for Migrant Workers* (2017).
31. Hamed Abdullahi Hamed v Republic [2017] eKLR.
32. Harris LM, 'The Kafala System Disables Workers: International Disability Law Can Hold Saudi Arabia Accountable' *Just Security* (20 May 2026).
33. International Air Transport Association & Another v Akarim Agencies Company Limited & 2 Others [2014] eKLR.
34. International Commission of Jurists, *Access to Justice for Migrant Workers in Africa* (2021).
35. International Commission of Jurists, *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide* (2018).
36. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3.
37. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
38. International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.
39. International Labour Organization, *Access to Justice for Migrant Workers* (2017).
40. International Labour Organization, *Employer-Migrant Worker Relationships in the Middle East* (2021).
41. International Labour Organization, *General Principles and Operational Guidelines for Fair Recruitment* (2016).
42. International Labour Organization, *Guidance on Bilateral Labour Migration Agreements and Memoranda of Understanding* (2022).
43. International Labour Organization, *Key Findings from an Assessment of the Kenyan Legal Framework for Access to Complaints and Remedy Procedures by Migrant Workers* (Policy Brief, 8 July 2025).
44. International Labour Organization, *Labour Migration and Recruitment: Fair Recruitment Practices* (2019).
45. International Labour Organization, *Practical Guidelines for Employers and Recruiters on Fair Recruitment* (2019).

46. International Labour Organization, *Pre-Departure Orientation Programmes for Migrant Workers* (2020).
47. International Labour Organization, *Promoting Fair Recruitment and Preventing Trafficking in Persons* (2021).
48. International Labour Organization, *Protecting the Rights of Migrant Workers: A Shared Responsibility* (2022).
49. International Labour Organization, *The Migrant Recruitment Industry in Kenya* (2023).
50. International Labour Organization, *Women and Men in the Informal Economy: A Statistical Picture* (2023).
51. International Labour Organization Convention No. 189 concerning Decent Work for Domestic Workers.
52. International Labour Organization Convention No. 190 concerning Violence and Harassment in the World of Work.
53. International Organization for Migration, *Community-Based Protection in Migration Contexts*.
54. International Organization for Migration, *Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation and Abuse* (2019).
55. International Organization for Migration, *Reintegration Handbook* (2019).
56. International Organization for Migration, *World Migration Report 2024*.
57. International Trade Union Confederation, *The Kafala System: Modern Slavery in the Gulf* (2021).
58. International Trade Union Confederation, 'Trade Unions Take Saudi Arabia to UN Labour Body over Exploitation and Deaths of Migrant Workers' (4 June 2025). <Trade unions take Saudi Arabia to UN labour body over exploitation and deaths of migrant workers - International Trade Union Confederation> Accessed on May 20,2026.
59. Judiciary of Kenya, *Court Annexed Mediation Manual* (2018).
60. Kaare S, Chowdhury N and Kazi V, *The Power of Evidence in Advocacy: Resource Pack for Trainers on Evidence-Based Policy Advocacy in East Africa* (ODI Global 2007).
61. Kenya Law Reform Commission Act, 2013.
62. Kenya National Commission on Human Rights Act, 2011.
63. Kenya National Commission on Human Rights, *Silent No More: A Report on Kenyan Migrant Workers in the Gulf* (2023).
64. Kenya National Human Rights Commission, *Silenced and Forgotten: Survivors of Labour Migration Abuses* (2023).
65. Kenya Power & Lighting Company Limited v Aggrey Lukorito Wasike [2017] KECA 446 (KLR).
66. Kifano v Loivin Limited & 4 Others [2024] KEELRC 13536 (KLR).
67. Kibii E, 'Multi-Agency Team Launched to Arrest Rogue Recruiters, Agencies' *The Star* (19 July 2025). < https://www.the-star.co.ke/news/2025-07-19-multi-agency-team-launched-to-arrest-rogue-recruiters > accessed 20 May 2026.

68. KUDHEIHA, *KUDHEIHA Workers*.
69. Labour Institutions Act, 2007.
70. Labour Migration Management Bill No. 42 of 2023.
71. Labour Relations Act No. 14 of 2007.
72. Law Society of Kenya Act (revised edition, 2023).
73. Legal Aid Act No. 6 of 2016.
74. Maduku Mbashani & Another v Republic [2019] KEHC 9694 (KLR).
75. Maria Diefallah, Not Only Kafala, *Africa is a country*, July 2024. https://africasacountry.com/2024/07/not-only-kafala
76. Marigu S and Elmawi O, 'KAZI MAJUU' (Global Justice Group, 31 July 2023).
77. Martha Albertson Fineman, 'The Vulnerable Subject and the Responsive State' (2010) 60 *Emory Law Journal* 251.
78. McAuliffe M and Ceriani Cernadas P (eds), *World Migration Report 2026* (IOM 2026).
79. Mediation Accreditation Committee, *Court Annexed Mediation Guidelines*.
80. Middle East Eye, 'At Least 274 Kenyan Workers Dead in Saudi Arabia over Past Five Years' (17 March 2025). <https://www.middleeasteye.net/news/least-274-kenyan-workers-dead-saudi-arabia-over-past-five-years> accessed 20 May 2026.
81. Ministry of Foreign and Diaspora Affairs (Kenya), State Department for Diaspora Affairs.
82. Ministry of Labour and Social Protection (Kenya), *National Assistance Trust Fund for Victims of Trafficking in Persons: Trust Fund Guidelines for Assisting Victims of Trafficking in Persons* (2023).
83. Ministry of Labour and Social Protection (Kenya), *National Policy on Labour Migration* (Sessional Paper No. 5 of 2023).
84. Ministry of Labour and Social Protection (Kenya), *Standard Operating Procedures for Investigating and Prosecuting Trafficking in Persons in Kenya* (2023).
85. Ministry of Labour and Social Protection (Kenya), State Department for Labour and Skills Development. <https://www.labour.go.ke/departments> accessed 20 May 2026.
86. Mwakilishi, 'Money Isn't Everything: Kenyan Workers in Gulf Countries Speak Out' (13 August 2025). <https://www.mwakilishi.com/article/diaspora-news/2025-08-13/money-isnt-everything-kenyan-workers-in-gulf-countries-speak-out > accessed 20 May 2026.
87. Mutambo A, 'How Myanmar Became Destination for Trafficked East Africans' *The EastAfrican* (16 November 2022). <https://www.theeastafrican.co.ke/tea/news/east-africa/myanmar-new-trafficking-destination-for-e-africans-4022364> accessed 20 May 2026.
88. National Employment Authority Act, 2016.
89. National Employment Authority (Kenya), *Guidelines on Recruitment Agencies*.
90. National Government Coordination Act, 2013.
91. National Assembly Standing Orders.
92. NORC at the University of Chicago, *Forced Labor Among Kenyan Migrant Workers in the Gulf Cooperation Council Countries: A Prevalence Estimation Report* (2021).

93. Nyakong'o v Gratify Solutions International Limited & 3 Others; National Employment Authority (Interested Party) [2025] KEELRC 3258 (KLR).
94. Office of the United Nations High Commissioner for Human Rights, *Human Rights Council Complaint Procedure*.
95. Office of the United Nations High Commissioner for Human Rights, *Special Procedures of the Human Rights Council*.
96. Palermo Protocol, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the United Nations Convention against Transnational Organized Crime (2000).
97. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.
98. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).
99. Senate Standing Orders.
100. The Star, 'Ruto: Over 494,000 Youths Working Abroad' (29 April 2026). <https://www.the-star.co.ke/news/2026-04-29-ruto-over-494k-youths-working-abroad> accessed 20 May 2026.
101. UNCITRAL, *Model Law on International Commercial Arbitration*.
102. UN Development Programme, *Informal Justice Systems: Charting a Course for Human Rights-Based Engagement* (2006).
103. UN Human Rights Council, *Guiding Principles on Business and Human Rights* (2011).
104. UN Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences* (17 July 2023) UN Doc A/HRC/54/30.
105. UN Office of the High Commissioner for Human Rights, *The Rights of Migrants with Disabilities* (2021).
106. UN Women, *Addressing Violence against Women Migrant Workers* (2020).
107. UNGA Resolution 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (16 December 2005) UN Doc A/RES/60/147.
108. United Nations High Commissioner for Refugees, *Community-Based Protection Guidelines*.
109. United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2024*.
110. University of San Francisco School of Law, *University of San Francisco Law Clinic Files 15 Landmark UN Complaints on Behalf of Kenyan Workers Disabled Under Saudi Arabia's Kafala System* (Press Release, 28 April 2026).
111. Victim Protection Act, 2014.

GJK

GLOBAL JUSTICE KENYA

"Where there is a right, there must be a remedy."