

OVERVIEW ANNEX INPUTS FOR RT 2.2 ON PROTECTION OF MIGRANTS IN ALL SITUATIONS

Country/Organization	No. of Inputs	Title of M&D Policy or Practice
Kenya	1	Legal and Constitutional Framework

Annex to the RT 2.2 Background Paper on Protection of Migrants in All Situations

This Annex contains descriptions and references to examples of relevant frameworks, policies, programmes, projects and other experiences in relation to the issues raised in the policy part of the Background paper. This second part of the Background paper aims to form the basis of an evolving catalogue of policies and practices with a view to be stored and displayed on the GFMD PfP website in the M&D Policy and Practice Database. See <http://www.gfmd.org/pfp/ppd>.

Title of M&D Policy or Practice: Legal and Constitutional Framework	
Country: Kenya	Partner(s):
Thematic Area(s): Protection Of Migrants In All Situations«F19»	Tags: «F21»
<p>Summary:</p> <p>The government provides equal access to legal protection and social services to all migrants. This is guaranteed in both the constitution and statutes. Article 27(ii) of the Constitution states that every person is equal before the law and has the right to equal protection and equal benefit of the law. This equality includes the full and equal enjoyment of all rights and fundamentals freedoms for both women and men. It guarantees the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.</p> <p>Employment Act 2007</p> <p>The law upholds the constitutional principle at Article 28 that every person has inherent dignity and the right to have that dignity respected and protected. They are deemed to have equal rights before the law and are treated equal with regard to terms and conditions of employment and including remuneration. The Employment Act does not distinguish between nationals and migrant workers.</p> <p>Migrants just as nationals are guaranteed the right to fair labour practices and including the right to form, join or participate in the activities and programmes of a trade Union or employer’s organization. They may also engage in collective bargaining as well as go on strike which is protected by the Labour Relations Act. PART XI of the Employment Act which deals with foreign contracts of service provides for protection of Kenyan Nationals who seek to contract locally but whose jobs are to be performed outside the country. Section 84 requires that such foreign contract of service shall be attested by the Labour Office to satisfy the consent of the employee has been obtained, any fraud, coercion or undue influence, any mistake of fact or misrepresentation which might have induced the employee to enter into the contract. This is done in prescribed forms. This includes execution of a security bond.</p> <p>The government also recently embarked on a process of ensuring support to Kenyans living and working in the Middle East, where three Labour attaché posts were created within the foreign missions in Saudi Arabia, Qatar and United Arab Emirates. The private sector and other stakeholders participate play a significant role through the Tripartite bodies process. Such include the National Labour Board, Task Force on Foreign Employment Agencies among other.</p> <p>It prohibits direct or indirect discrimination in all its forms whether on ground of race, sex, pregnancy, marital status, health, status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. To give full effect to the realization of the rights guaranteed under this Article, the Constitution contemplates the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantages suffered by individuals or groups because of past discrimination. Migrant workers’ have the right to enjoy to the highest attainable standard of health, which includes the rights to health care services, including reproductive health care, accessible and adequate housing, and to reasonable standards of sanitation and to be free from hunger, and to have adequate food of acceptable quality. They are also entitled to clean and safe water in adequate quantities, social security and education.</p>	