CURRICULUM ON MIGRATION AND HUMAN RIGHTS
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INTRODUCTION

The International Organization for Migration (IOM) defines migration as the movement of people or a group of persons either across an international border or within a state\(^1\). This definition encompasses the movement of refugees, economic migrants, displaced persons and other movements of persons for other reasons such as family reunification. The International Labour Organization estimates that around three per cent of the global populations are international migrant workers and members of their families.\(^2\)

While migration can be a positive and rewarding experience for many migrants, a large number of migrants face serious violations of their human rights at various stages of their journey. Some of the violations they experience include ill-treatment by immigration or law enforcement authorities, slavery, sexual exploitation, removal of body organs, exploitative traditional practices, confiscation of identity documents, systemic discrimination and wide-spread xenophobia and prejudice among others.

\[^1\] https://www.iom.int/key-migration-terms last accessed on 22\(^{nd}\) July 2017
\[^2\] International Labour Migration: A Rights-based Approach; ILO; 2010.

SECTION ONE – GENERAL

National Human Rights Institutions (NHRIs) are uniquely placed to play an important role in the protection and promotion of the human rights of migrants\(^3\). The Kenya National Commission on Human Rights (KNCHR) is the constitutional body with the sole mandate of ensuring the promotion and protection of human rights in Kenya. The commission is mandated to provide oversight over state and non-state actors in the area of the human rights. They are also charged to receive and respond promptly and effectively to cases of violations of the human rights of their nationals and those within the country and to ensure the State’s compliance with the international laws and obligations. Therefore, KNCHR plays a critical role of engaging with different stakeholders at both national and international level in promoting and protecting the human rights of migrants.

Human trafficking and smuggling are some of the human rights violations to migrants. They present a complex and multifaceted problem that takes the form of economic, physical and sexual exploitation of people, both adults and children, for the economic

\[^3\] Asia Pacific Forum: Promoting and protecting the Rights of Migrant Workers: The Role of National Human Rights Institutions, APF; 2012.
gain of their exploiters. Kenya has been identified as a country of origin, transit and destination for trafficked persons. Regular and irregular migrants have human rights which are subject to abuse no matter how they are categorized, including if they themselves are alleged to have committed a crime like crossing a border without proper permission. Not that migrants have impunity to violate the law, but that their rights must be recognized no matter their status. The majority of trafficked and smuggled persons in Kenya are escapees of protracted conflicts in the Horn of Africa, poverty and effects of bad governance as well as search for better livelihoods in Kenya, to Southern Africa region as well as towards Yemen.

Therefore, based on KNCHR’s salient features such as constitutional mandate, long-term experience on promotion and protection of human rights; geographical outreach; the Commission stands at a unique position towards entrenching the human rights of victims of trafficking and human smuggling in Kenya.

KNCHR’s mandate towards promotion and protection of the human rights of migrants is aligned to the country’s Vision 2030 and the Sustainable Development Goal No. 8 both of which recognize migration as one of the key areas of development and its positive contribution to the global economy.

1.0 TRAINING NEED

The KNCHR derives its mandate from the Constitution of Kenya to exercise oversight on human rights over state and non-state actors in the area of human rights with strategies that address prevention, protection and prosecution of human rights violation. However, based on the survey carried out among the KNCHR staff, there is a lack of appreciation of human rights of migrants leading to inaccurate categorization of the violation leading to improper redress of the problem. There is also inadequate awareness on applicable laws, policies and procedures, as well as the different tools available for assisting victims such as the National Referral Mechanism. The improper redress to violations is reflected in the documentation of the same cases as they are wrongly categorized hence resulting in a misguided
analysis of the migration situation in the country. This hampers the Commission’s roles in effectively carrying out its oversight and advisory role to the government. The government is then unable to effectively plan its intervention projects to the human rights violations.

Therefore, it is important to strengthen the national human rights institutions in the protection and promotion of migrant rights in their day to day operations.

The training of KNCHR staff will enhance their knowledge on human rights for migrants and on the role, responsibility and obligation of the Commission in promoting and protecting these rights. The three-day training will equip the KNCHR staff with practical skills on how to identify different migrant rights violations how to effectively respond to these violations hence better-equipping them on their mandate in promoting these rights. Consequently, the Commission will explore different strategies to support public institutions to incorporate human rights dimension in migration related policy making, legislation and programming.

This learning plan addresses the training gap by providing a holistic training to KNCHR staff on the phenomena of migration and the human rights of migrants and the available redress/referral mechanisms of support towards the victims of human trafficking. This learning plan addresses this training gap by providing a holistic training to KNCHR staff on the phenomena of migration and the human rights of migrants and the available redress/referral mechanisms of support towards the victims of human trafficking.

2.0 COURSE AIM AND OBJECTIVES

The aim of migration and human rights course is to enhance knowledge of the KNCHR staff on migrant rights and highlight the role, responsibility and obligation of the Commission in promoting and protecting these rights.
Specific course objectives include:

1. To provide conceptual and theoretical framework on Migration and Human rights for Migrants.
2. To promote understanding and application of legal and institutional framework on migration at the national, regional and global level.

Specific course learning outcomes include:

By the end of the training the trainee is expected to:

1. Demonstrate an understanding in the application of the legal framework on human rights of migrant rights in day to day work.
2. Explain different strategies which KNCHR will adopt in supporting the Kenyan government and relevant institutions incorporate a human rights dimension into migration policies, legislation and programming.

SECTION TWO: COURSE CONTENT

Learning Objective 1: To provide conceptual and theoretical framework on Migration and Human rights for Migrants.

TOPIC 1.1: INTRODUCTION TO MIGRATION

Specific Learning Outcomes:

At the end of the topic the trainees should be able to:

a) Define, describe and distinguish with examples the different types of migration
b) Explain with examples the push and pull factors of migration
c) Describe the historical and current trends of migration
Sub-topics:

- Definition of terms:
  - Migration
  - Emigration
  - Immigration
  - Country of origin, transit, destination
  - Refoulment and Principle of Non-refoulment

- Human Rights of “special groups” such as asylum seekers/refugees and special need groups (victims of SGBV, UAM, persons in handicap).

- Why do people migrate?
  - Push factors
  - Pull factors

- Regular and irregular Migration
  - Definition of regular Migrants
  - Irregular migrants (explain why the concept of irregular migration is used instead of illegal” to stress that illegal actions may have understandable motivations, such as inability to get a visa due to lack of availability rather than lack of effort, and that people committing illegal actions in migration are not themselves “illegal”.
  - Elaborate how all different types of migrants could conceivably face abuse as part of their migration process
  - The nexus between Human Trafficking, Smuggling of Persons and Irregular migration (incl. explanation of pathways into irregularity)

- Migration trends (historical and current trends)
  - Global trends
  - Regional trends
  - National trends
Methodology

- Formal lecture
- Maps showing migratory routes
- Video clip on “Why do people migrate?”
- 2 Case studies: The first case study, the participants should be able to classify the different types of migrants according to the push and pull factors. The second case studies participants should be able to show the linkage between regular migrants, irregular migrants and human trafficking.
- Flow chart to explain the different types of migration

Duration: 135 minutes

Evaluation: Question and answer sessions

TOPIC 1.2: TRAFFICKING IN PERSON AND MIGRANT SMUGGLING

Specific learning outcomes:
At the end of the topic the trainees should be able to:

a) Define human trafficking and smuggling of persons
b) Distinguish between Trafficking in Persons and Smuggling of Persons
c) Identify victims of trafficking
d) Demonstrate how to appropriately interview victims of trafficking and smuggled persons
e) Explain the causes and the impact of human trafficking
f) Demonstrate understanding of the 4Ps model

Sub-topics
- Introduction to Human Trafficking
• Definitions of Human Trafficking and Smuggling (Case studies)
  o Causes of Human Trafficking and Smuggling of persons
  o Effects of Human Trafficking on victims, the community and the country (e.g. Socio-economic, Psychological, Physical, spiritual)
  o Differences between Trafficking in persons and Smuggling of persons
  o Challenges of definitions overlapping categories

• Victim identification and Assistance
  o Identification of victims of trafficking (NRM toolbox)
  o Interviewing victims of trafficking and smuggled persons (Practical guide to interviewing - skills and strategies – How to)
  o Interviewing child victim of trafficking
  o Other vulnerable persons

• Intervention methods
  o Prevention, protection, prosecution and partnerships
  o Effective investigation

• Reporting and referral mechanisms
  o National referral mechanism.

Methodology:

✓ Lecture
✓ Video clips 2: Introduction to Human Trafficking; Forms of trafficking
✓ Case study
✓ Role play- Interviews, identification
✓ Group work on effects of trafficking
✓ National referral mechanism toolbox

Duration: 270 min

Evaluation: Question and answer sessions
Additional reading materials:

1. GOK: Guidelines National Referral mechanism, 2016
2. IOM, Guidelines for Assisting Victims of Human Trafficking in the East Africa Region, 2011

**TOPIC 1.3: MIGRATION IN THE KENYAN CONTEXT**

**Specific learning outcomes:**
At the end of the topic the trainee should be able to:

a) Describe the migration trends in Kenya
b) Identify migratory routes in and from Kenya
c) Demonstrate understanding of the national and regional migratory trends; identify key gaps and options for solutions.

**Sub-topics**

- Migration trends in Kenya
  - Historical trends
  - Current trends
  - Migratory Routes
    - Data on migration trends: number of persons moving to, through and from Kenya; estimated number of trafficked victims; number of smuggled persons in Kenya.
    - Push and pull factors in Kenya

- Regional dimension:
  - Common migratory routes: Southern Route, Eastern Route and Northern Route
Role of IGAD in regional migration management – identify key gaps in migration management, discuss options for solutions.

Methodology:

- Power point presentation
- Video (Migration in Kenya)
- Map (migratory routes)
- Activity: Group work on key gaps in migration management in Kenya and Eastern Africa region and provide options for solutions.

Duration: 135 minutes

Evaluation: Question and answer sessions

Additional reading materials:

1. 2010 Overview on South-South Migration and Development in Kenya: Trends and Research Needs. ACP, Brussels

Learning Objective 2: To promote the understanding and application of the legal framework on migration in the work of the KNCHR
TOPIC 2.1: OVERVIEW OF THE LEGAL AND INSTITUTIONAL FRAMEWORK ON MIGRATION

Specific learning outcomes: At the end of the topic the trainee should be able to:

a) Identify relevant legal frameworks applicable to human rights and migration at the international, regional and national level.

b) Demonstrate an understanding of international human rights principles as pertains migrants rights.

c) Demonstrate an understanding of limitation to the principle of universal access to human rights.

Subtopics:

a) International legal framework for human rights of migrants. It finds its basis on the core international human rights instruments. These are:

- Universal Declaration of Human Rights,
- International Covenant on Economic, Social and Cultural Rights,
- International Covenant on Civil and Political Rights,
- International Convention on the Elimination of All Forms of Racial Discrimination,
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Rights of the Child
- Convention Against Torture and other Cruel, Inhumane or Degrading Treatment

b) International legal and institutional framework on migration and migrants rights. Some of the conventions include:

- Migrant Workers (Supplementary

- The 1990 International Convention on the Protection of the Rights of all Migrants and Members of Their Families (NB: Kenya has not ratified this)
  - Institution responsible for implementation: Committee on the Protection of the rights of all Migrants and Members of their families

- The 1951 Convention relating to the Status of Refugees
  - Institution responsible for implementation - UNHCR- The Refugee Agency

- The 1967 Protocol Relating to the Status of Refugees
  - Institution responsible for implementation - UN Office on Drugs and Crime

- The 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

- The 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air
  - Institution responsible for implementation: UN Office on Drugs and Crime

c) International legal and institutional frameworks protecting the rights of migrants workers:

- ILO Convention concerning Migration for Employment 1949

- ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality Opportunity and Treatment of Migrant Workers (Supplementary Provisions) 1975
• ILO Equal Remuneration Convention (C100 – 1951) 2001
• Worst Forms Of Child Labour Convention, 1999 (No. 182)
• Minimum Age Convention, 1973 (No. 138)
  • Institution responsible for implementation: International Labour Organisation (ILO).

d) Common principles derived from International law as pertains rights of migrants:
  • Equality and non-discrimination
  • State obligations with respect to economic, social and cultural rights

e) Limitations to the principle of universal access to human rights of migrants:
  • The International Covenant on Civil and Political Rights – Article 25

• The International Covenant on Civil and Political Rights Article 2.3

f) Regional legal and institutional framework on human rights of migrants are anchored on the following selected instruments:
  • African Charter on Human and People’s rights
  • Resolution 114 on Migration and HR of the AU Commission on Human and People’s rights
  • African Court
  • African Commission on Human and People’s rights
  • Ouagadougou Action Plan 2006
  • IGAD Policy Framework on Migration RCP
  • Khartoum Process
  • EAC Counter Trafficking in Persons Act
g) National Law and Institutions on Human Rights for Migrants:

- The Constitution of Kenya 2010
- Kenya National Commission on Human Rights Act
- Counter Trafficking in Persons Act 2010
  - Advisory Committee on Counter trafficking of persons
  - National Assistance Trust Fund for Victims of Trafficking
- Kenya Citizenship and Immigration Act 2012
- Kenya National Labor Migration Policy
- Kenyan Citizenship and Immigration Act and Citizenship and Immigration Regulations 2011
  - The Ministries responsible are: the department of Immigration services, the Ministry in charge of Labour, currently the Ministry of East Africa Community, Labour and Social Protection.
- Refugees Act 2006 and Refugee (Reception, Registration and Adjudication)
  - The body responsible is Refugee Affairs Secretariat-(RAS)
- Kenya Citizens and Foreign Nationals Management Service Act
- Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act
- The Security Laws (Amendment) Act 2014
- Witnesses Protection Act
- Victim Protection Act 2010
- Police Act (Cap 84)
h) Overarching National oversight bodies:

- Kenya National Commission on Human Rights
- National advisory committee on counter trafficking in persons
- National coordinating mechanism- Immigration
- Commission on Administration of Justice
- National Gender and Equality Commission

**Methodology:**

To avoid overload and overkill of information the module on legal and institutional framework methodology should be presented as follows:

- A simplified hand out prepared and distributed online to the participants two weeks before the course commence.
- Actual presentation should be on broad subtopics with participants advised to refer to the hand-out material.
- PowerPoint presentation shouldn’t exceed 12 slides per module.
- Case study of Kenyan national experiencing topologies of migration. At the end of the case study, the participants will be asked to identify the different offences/violations, the type of migration involved, the laws applicable, the role and follow up action by KNCHR in assisting the victim and the follow up actions). The case study should
also bring out the 4Ps approach and the different vulnerabilities of the migrant.

✓ The problem based learning should be allocated more time.

✓ Video clip on Human rights and Trafficking in Persons after which the participants will be asked to identify the violations, the persons violating the victims, the law applicable and the follow up actions (referral pathway)

**Duration:** 180 minutes

**Evaluation:** Question & Answers, Constructive Feedback on the case study.

**Additional reading materials:**

- Kenya law reports- [http://kenyalaw.org](http://kenyalaw.org)
- African common position on migration and development ex.cl/277 (ix)
- Ouagadougou action plan to combat trafficking in human beings, especially women and children
- The migration policy framework for Africa ex.cl/276 (ix)
- Counter Trafficking in Persons Act, 2010
- Kenya Citizenship and immigration, Refugee act, Internally displaced persons Act
- Universal Declaration of Human Rights (1948)
- UN Convention relating to the Status of Refugees (1951) and its 1967 protocol
- UN International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- International Covenant on Civil and Political Rights (1966) and its 1989 Protocol No 2 on the death penalty
- UN Convention on the Elimination of All Forms of Discrimination against Women (1979)
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)
- UN Convention on the Rights of the Child (1989) and its Protocols
- International Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families (1990)

**TOPIC 2.2: MIGRATION AND HUMAN RIGHTS**

**Specific learning outcomes:** At the end of the topic the trainee should be able to:

At the end of the topic the trainee should be able to:

- Highlight the rights and obligations for migrants.
- Explain the various approaches to migration management.
- Discuss the role of NHRI's in promoting the rights of migrants.
- Discuss the mandate of KNCHR in relation to migrant rights
- Demonstrate an understanding of KNCHR departmental/ individual role in promoting and protection of human rights.

**Sub-topics**

- Overview of human rights of migrants:
  - Human rights and obligation for migrants
    - What is human rights?
    - Rights and obligations that are specific to migrants

- Approaches to Migration (Human rights based approach, victim-centered approach)
- Discuss limitations to the access of human rights of migrants
- From state point of view (management of irregular migration, balancing human rights and security)
- From Human Rights Based Approach
  - NHRI's role in promotion of human rights in the Migration process
    - The role of NHRI in promoting the rights of Migrants (best practices – Malaysian Model)
    - The role and mandate of KNCHR in promoting and protecting human rights for migrants (To be discussed within the 4 Ps)
      - Protection
      - Prevention
      - Prosecution
      - Partnerships
    - Strategies of KNCHR’s current programmes and instruments in promotion and protection of migrant rights.
  - Effect of Power and Corruption on human rights for migrants

Methodology

- Lecture- power point
- A chart to link KNCHR’s mandate to promotion and protection of human rights for migrants
- Group discussions:
  - Link between corruption & human
rights in context of migration
  o Management of irregular migration: balancing human rights and security
  o Strategies of KNCHR’s current programmes and instruments in promotion and protection of migrant rights.
  • Role play (power walk)

**Duration: 180 minutes**

**Evaluation:** Question and answer sessions; Constructive feedback on role play and group discussions.

**TOPIC 3: MONITORING, EVALUATION AND REPORTING**

Monitoring and Evaluation department at KNCHR will be responsible for providing overall M&E framework, evaluation templates and knowledge management plan. In order to plan systematically of practical steps the officers will pursue after training, two sessions for practical follow-up strategies will be undertaken with the following guideline:

  • In groups of specific departments and regions provide a plan on how you will integrate migrants’ rights promotion and protection.
  • Be specific on what you will do, how you will do it and by what period.
  • Specify resources you may need to make this happen.

***Hint (provide the participants with a log-frame template/action plan)***