Towards Implementation of the Global Compact on Migration: Taking a Human Rights Based Approach to Migration

Jacqueline Ingutiah-Onyango and Jedidah Wakonyo Waruhiu

Abstract.

Migration is inherent in human development since it has shaped the economic, social and political configuration of the current world. Skills transfer, economic expansion, private-sector development and diaspora remittances are examples of positive attributes associated with migration in many countries including Kenya. Despite the positive attributes; migrants across the globe face exploitation, exclusion and are generally deprived of their rights. As a source, transit, and destination country for different types of migration, Kenya remains a hub for trafficking in persons and smuggling of migrants making them easy targets for human rights violations.

Kenya has ratified various international and regional human rights instruments and has a progressive Constitution that provides protection of human rights for all. However, migrants’ especially irregular migrants do not enjoy these guaranteed rights. There is need therefore for Kenya to adopt a human rights based approach to migration governance. This approach recognizes that all human beings are endowed with inherent rights that must be protected. The United Nations Global Compact on Migration (GCM) recognizes that it is based on a set of cross cutting and interdependent guiding principles including respect, protection and fulfillment of human rights of all migrants.

This paper examines the concept of human rights based approach and how it augments states obligations under international, regional and national laws in respecting, protecting and promoting the rights of all migrants. It highlights the Kenya National Commission on Human Rights’ work on migration and human rights; and provides recommendations on how Kenya can implement the GCM objectives using a human rights based approach.

Key Words

1 LLB, MA, MCIArb - Regional Coordinator – Western Regional Office; and LLB, LLM - Commissioner Kenya National Commission on Human Rights respectively. Paper presented during the National Migration Conference “Towards Implementation of the Global Compact on Migration” July 2019 Nairobi
1. Introduction

The story of migration is the story of humankind, as a global phenomenon, it has positively impacted on the lives of people. Its effect includes relieving population pressure in crowded areas, economic growth, value-added production and cultural integration. As countries of origin most developing countries experience diaspora remittances, reduced vulnerability of families, increased foreign direct investment and greater potential for small businesses development.²

Kenya is a regional hub for mixed migration that experiences movement of migrants including refugees, asylum seekers and labour migrants. As a country of destination, it has experienced economic expansion, skills transfer and private-sector development. As a country of origin, diaspora remittances continue to be a major contributor to the economy.³

Whereas migration provides immense opportunities for individuals, families, communities and the state it is also susceptible to human rights violations. Migrants, especially irregular migrants face different forms of human rights violations as a result of their vulnerability including; detention in deplorable conditions, exploited and denied their basic human rights. Trafficking in persons and smuggling of migrants across the borders is rampant. In Kenya is considered a regional hub for trafficking in persons in the Horn of Africa. In addition to violence meted by non-state agents and individuals, migrants suffer systemic violations as a result of corruption, lack of awareness by state agencies and insufficient policies and laws.

In order to protect migrants’ rights from violations, states must take deliberate efforts to protect, promote and fulfill human rights for all migrants especially the most vulnerable regardless of their status.

2. Migration and Human Rights

2.1. Background

The concept that migrants are human beings with inherent dignity and rights is derived from the Universal Declaration of Human Rights (UDHR);\(^4\)

“...All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty...”

The UDHR articles affirm that migrants and non-migrants are all human beings and their rights must be respected, protected and promoted. Majority of States have ratified international and regional instruments reflecting the UDHR principle that all persons, irrespective of their national or social origin, jurisdictional or any status are entitled to have their human rights respected, protected, and fulfilled. Those that have not ratified are bound by international customary law that lays down certain rights and prohibitions that apply to all human beings including migrants. Further, most of these countries have domesticated these instruments through national legislations. In addition to the human rights instruments and laws, the current regional and global development agenda; both the African Union Agenda 2063 and the 2030 Agenda for Sustainable Development (SDGs) recognize migration as core development consideration. The SDGs have direct and cross cutting connections to migration. The direct connections are under goals 4- quality education; 5-gender equality; 8-decent work and economic growth; 10-reduced inequalities; 16-peace, justice and strong institutions; and 17 partnership for the goals. The cross-cutting connec-

\(^4\) See Articles 1 and 2 of UDHR
tions are under goals; 1- no poverty; 3- good health and wellbeing; 11- sustainable cities and communities and 13- climate action.\(^5\)

Unfortunately, despite the existence of human rights instruments and laws that affirm migrants’ human rights; and development agenda that recognizes migration as a powerful driver for sustainable development; migrants especially the vulnerable continue to be subjected to abuse, exploitation, discrimination, and other severe human rights violations. It is worthwhile to note that the suffering witnessed by migrants does not only occur at the country of destination but happens across several stages of migration.

The violations of migrants’ rights are not as a result of the absence of the international instruments and national law that recognize human rights for all, but the lack of the effective implementation of these laws and human rights instruments; and appropriate cooperation between relevant agencies\(^6\).

2.2. Legal Provisions on Migrants Human Rights in Kenya

Kenya has ratified a number of key international and regional human rights instruments that complements the UDHR in promoting human rights and fundamental freedoms for migrants. At the international level these instruments include; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; Convention against Transnational Organized Crime together with its Protocols\(^7\); and the Convention Relating to the Status of Refugees and its Protocol. The country however is yet


\(^6\) See IOM (ud) Protection of the Human Rights and Fundamental Freedoms of Migrants and the specific needs of migrants in vulnerable situations Global Compact Thematic Paper | Protection of Human Rights


\(^7\) See Protocol against Smuggling of Migrants by Land, Sea and Air and Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children
to ratify a comprehensive instrument aimed at protecting the rights of migrant workers and their children namely; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

In addition, the country has ratified a number of regional human rights instruments including; the African Convention on Human and Peoples Rights; and the Convention Governing the Specific Aspects of Refugee Problems in Africa.

At the national level, the Constitution of Kenya’s preamble explicitly recognizes that Kenyans aspire for a government based on the essential values of human rights, equality, freedom, democracy, social justice and rule of law. The Constitution further contains a robust Bill of Rights under Chapter 4 which applies and binds all state organs and all persons. Article 20 (2) provides that; “…Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent…”

This means that the rights guaranteed in Chapter 4 are to be enjoyed by both citizens and non-citizens. As a monist state, rules of international law and any treaty or convention ratified by it forms part of its laws. Under Article 21 (1) and (3) state and state organs have a fundamental duty to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights and to address the needs of vulnerable people. The court in *Kituo cha Sheria & 8 others -vs- Attorney General (2013)* eKLR (Kituo cha Sheria case) ruled that refugees fall within the category of vulnerable persons under Article 20(3). In justifying its position the court held that;

“...They (refugees) are vulnerable due to the lack of means, support systems of family and friends and by the very fact of being in a foreign land where hostility is never very far…”

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8 Article 20(1) of the Constitution of Kenya
9 Article 20(1) of the Constitution of Kenya
10 Article 2(5) and (6) of the Constitution of Kenya 2010
All migrants are entitled to all rights under the Constitution except for right to information, political rights; and right to enter, remain in and reside in anywhere in Kenya\textsuperscript{12}. Although the Constitution restricts the recognition of certain migrants’ there are no limitations to certain rights such as freedom from torture and cruel, inhuman or degrading treatment or punishment, right to fair trial and freedom from slavery or servitude.\textsuperscript{13}

In addition to the Constitution, there exist a number of national legislations that are relevant to migrant rights. The Refugees Act (2006) and its 2009 Regulations that has seen the state assume partial responsibility for refugees status determination; establishes the Department of Refugee Affairs; sets out eligibility criterion for refugee status; right to appeal against administrative decisions and prohibits refoulement. The Kenya Citizenship and Immigration Act (2011) and its 2012 Regulations. The Act among others establishes a multi-agency Border Control and Operations Coordination whose mandate includes ensuring compliance within the standards by respective agencies to ensure effective and efficient management of operations at designated entry and exit points. Additionally the Act makes provision for: application for citizenship by stateless persons, migrants and their descendants; duties and responsibilities of citizens and immigration control including prohibited immigrants\textsuperscript{14}. Under Section 49, immigration officers or police officers are required to conform to the provisions of the Bill or Rights under the Constitution during arrest.

The Legal Notice No. 208 of 30th December 2016 permits the Cabinet Secretary under the Citizenship and Immigration Regulations has powers to waive; payable fees and requirements to produce documents or evidence in support of an application for citizenship by registration for stateless persons, migrants and their descendants. The Kenyan Citizens and Foreign Nationals Management Service Act (2011) provides for the creation and maintenance of a national population register. Other laws relevant to migration rights include; Counter Trafficking in Person Act (2010); Children Act (2001); Prevention of Terrorisms Act (2012); Prevention of Organized Crimes Act (2010) Sexual Offences Act (2006); Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2012); and the Penal Code.

\textsuperscript{12} Articles 35, 35, 38 and 39(3) which specifically refer to ‘citizen’ and not ‘person’.
\textsuperscript{13} Article 25 of the Constitution of Kenya
\textsuperscript{14} Secs Section 5B (1) c), 15, 16, 17, Part IV and VI of the Kenya Citizenship and Immigration Act (2011)
Further, the country has put in place policies aimed at promoting migrants rights such as the National Diaspora Policy and Vision 2030 (together with its medium term plans). However, the country is yet to establish a National Migration Policy and National Labour Migration Policy. Researches show that while the Kenyan legal system has progressively evolved to protect migrants, there exist certain challenges that hamper the realization of migrants’ rights. The challenges include lack of concrete, reliable and adequate evidence on migrants\(^\text{15}\) and where data is available lack of mechanisms for coordinated and centralized migration data management, sharing and dissemination of information is missing\(^\text{16}\); poor coordination and lack of policy integrations especially at the local level; and limited capacity and resources. These challenges continue to impede effective enforcement of the progressive laws.

As a result if these and other challenges, migrants in Kenya continue to remain vulnerable. This is evident from the 2015 IOM report\(^\text{17}\) that highlights Kenya as a regional hub for human trafficking and that Kenyans who migrate to Middle East are at a high risk of exploitation. In addition, migrant children are subjected to forced labour through various forms such as domestic services and are sexually exploited through prostitution especially at the Kenyan coast\(^\text{18}\). In 2019, the US Department of State report on Trafficking in person recognized the Kenyan government’s efforts in eliminating trafficking in persons but noted that it is yet to meet the minimum standards for eliminating the vice.\(^\text{19}\)

Kenya must appreciate that when migration is not founded on the basis of human rights, it will not achieve its intended purpose of development and social change\(^\text{20}\) and it has an obligation under international and regional human rights treaties, the Constitution and enabling legislation to respect, protect and fulfill human rights for all regardless of nationality.


\(^{16}\) See IOM (2015) country profile

\(^{17}\) See Migration in Kenya: A Country Profile 2015

\(^{18}\) See IOM Kenya 2018 Humanitarian Compendium


2.3. Human Rights Based Approach to Migration Governance

Human Rights Based Approach (HRBA) is normatively based on international and regional human rights standards to protect and promote human rights for all. This approach emphasizes on the need to fulfill human rights by; identifying those left behind, their entitlements and capacity to claim their rights as right-holders; the obligations and capacity of duty bearers to meet their obligations; and application of international human rights standards in all phases of programming. This approach recognizes that all human beings are born free and endowed with inherent dignity and rights. It adopts broader focus on the need for realization of the full range of human rights that are necessary for a dignified life and deliberate efforts must be put in place and implemented in order to address the root causes of inequality and the underlying impediments to the realization of rights. It works at realizing rights and identifies and holds responsible those who hold corresponding duties to promote and protect these rights. Human Rights Based Approach principles are; participation; accountability; non – discrimination; transparency; human dignity; equality and rule of law.

Appreciating that migration is inevitable and brings with it certain vulnerabilities, enables states move beyond border-control mechanism and adopt coherent, holistic and human rights-based approaches to address the underlying challenges faced in migration governance.

Migration in Kenya comprises of complex, and often fragmented, institutional and legal architecture. No single institution can claim monopoly in working on migration issues and virtually everything to do with migration contains human rights element. The National Coordination Mechanism (NCM), a government led interagency platform whose objective is to bring both state and non-state migration stakeholders for better coordination of migration issues in Kenya. Its establishment is a positive direction towards recognizing that migration requires better coordination

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21 See UN Practitioners Portal on Human Rights Based Approaches to Programming
23 Ibid
and strategic collaboration. There is need for the application of HRBA in different mechanisms that respond to different migration situations\textsuperscript{24} including the NCM.

\textbf{2.4. The Kenya National Commission on Human Rights work on Migration and Human Rights}

The Kenya National Commission on Human Rights (Commission) is established under Article 59 of the Constitution of Kenya (2010) and operationalized through the Kenya National Commission on Human Rights Act of 2011. Its core mandate is to ensure the protection and promotion of human rights in Kenya. The Commission undertakes various functions on human rights including; receiving and processing of human rights complaints; conducting investigations and research; providing redress to victims of human rights violations; monitor state’s compliance with her international and regional obligations; advising the Government on human rights issues; raising awareness to the public and duty bearers; and reviewing laws to check compliance with human rights principles and standards\textsuperscript{25}.

In undertaking its mandate, the Commission has processed complaints relating to migrants rights which approximately 1\% of the total complaints received. Majority of the cases involved seeking protection of personal security and compensation and resettlement of internally displaced persons\textsuperscript{26}. Due to limited mandate in some cases, the Commission works closely with referral partners using its complaints management system to protect the rights of all migrants.

The Commission has actively participated in litigating cases in court including the \textit{Kituo cha Sheria} case and offered advisory opinions to the court in Kehancha - Migori County in cases where migrants were charged with minor immigration offences\textsuperscript{27}. The Commission’s opinion

\textsuperscript{25} See Section 8 of the Kenya National Commission on Human Rights Act (2011)
\textsuperscript{26} Source KNCHR Complaints Managements System
\textsuperscript{27} Kehancha PMC Criminal cases Nos. 674 and 675 of 2018 and Kehancha PMC Crim. Cases Nos. 183-187 of 2019
guided the court in granting discharge orders and return of the accused persons by UNHCR to their designated residences. These orders protected the irregular migrants from serving prison sentence. With the support of the Commission, the practice has also been adopted by the Wajir Court.28

As a member of the National Advisory Committee on Counter Trafficking in Persons (AC-CTIP) and the National Coordination Mechanism, the Commission has participated in the development of various documents including; Guidelines for the identification of the Victims of trafficking, Draft Regulations on Counter trafficking in persons Act, 2010; Draft National Migration policy; Migration Curriculum and Draft Migration Profile.

Under the Better Migration Management Programme the Commission is implementing the Migration and Human Rights project29. The project has seen the Commission enhance the capacity of 72 of its staff members on migration and human rights; enhance awareness of 280 partner institutions drawn from the state and non-state actors countrywide on migration and human rights and the role of duty bearers in protecting migrants’ rights; develop a duty bearers’ handbook on migration and human rights30. Further, the Commission under the project undertook a country-wide baseline survey on the status of migrants’ rights in places of detention. The collation of the survey report is ongoing.

3. The UN Global Compact on Safe and Orderly and Regular Migration

UN Global Compact on Safe and Orderly and Regular Migration (GCM) was adopted on 10th December 2018 and formally adopted by the UN General Assembly on 19th December 2019. It is the first inter-governmental agreement prepared under the auspices of the United Nations to cover international migration in a holistic and comprehensive manner. Developed through a ro-

https://www.youtube.com/watch?v=nWeM0HDHu0I
30 KNCHR (ud) Handbook on Migration and Human Rights Simplified Reference Material
bust engagement with multi-stakeholders, it is designed among others to give countries space and flexibility to implement the GCM based on their own migration realities and capacities.

The GCM vision is built on common understanding and shared responsibilities by all state and non-state agencies in promoting migrants rights. The guiding principles of the GCM include; people centered, rule of law and due process, human rights, whole of government approach and whole of society approach\(^\text{31}\). The GCM has established 23 objectives and commitments, all which have either direct or cross-cutting connection with human rights. Those with direct connection are listed at the recommendation section in this paper. The GCM objectives are aimed at among others; mitigate the adverse drivers and structural factors that hinder people from building and maintaining sustainable livelihoods in their countries of origin; and reduce the risks and vulnerabilities migrants faced at different stages of migration by respecting, protecting and fulfilling their human rights.

The GCM recognizes the role of National Human Rights Institutions in the implementation of the GCM under various objectives\(^\text{32}\). In view of the above, the GCM has to a large extent incorporated human rights based approach to migration governance and states should apply this approach during its implementation.

As an accredited ‘A’ Status National Human Rights Institution (NHRI)\(^\text{s}\) and with the mandate to promote and protect human rights in the country, the Kenya National Commission on Human Rights welcomes the adoption of the GCM by United Nations member states and in particular the Republic of Kenya. The Commission under the umbrella of the Global Alliance of National Human Rights Institutions (GANHRI) has engaged in discussions of the role of NHRI\(^s\) in ensuring Human Rights Based and gender based implementation, follow up and review of the Global Compact on Migration. As a member of Network of African National Human Rights Institutions (NANHRI), the Commission is part of the NANHRI Working Group on Migration. The purpose of the Working Group is to provide direction in a system-wide context and promote interests and

\(^{31}\) See Paragraph 15 of the GCM

\(^{32}\) Objectives 2 c); 11 c), 12 c), 15 d) and 17 d)
dialogue on Migration and Human Rights, at the national and regional level. The Commission recently participated in the Working Group follow up and review meeting that discussed and shared modalities of multi-stakeholder cooperation for the implementation of the GCM and its ownership at the continental and national level.33

4. Conclusion and Recommendations

Human rights-based approach to migration embodies the values that migrants are human beings; migrants should be empowered to claim their rights and state must promote, protect and respect migrants’ rights. Kenya should develop a National Action Plan with goals, targets and indicators that ensure the realization of migrant rights during the implementation of the GCM.

To support the integration of rights based approach in implementing the objectives of GCM including the development of the National Action Plan the government and other stakeholders need to consider the following recommendations;

a) Objective 1: Collect and utilize accurate and disaggregated data as a basis for evidence-based policies.

Accurate data collection, analysis and dissemination is important in establishing effective strategies for relevant interventions in preventing or addressing human rights violations. Data collection can be improved through integrating migration-related topics in national censuses and relevant stakeholders sharing credible information that will be helpful in development of evidence-based migration policies. The analysis and dissemination of results should be timely, disaggre-
gated and tabulated in accordance with international standards. Incorporation of HRBA principles during the process can include; participation of relevant groups and institutions including data disaggregation; transparency of processes and public information; Human Dignity including research ethics, privacy and confidentiality; upholding human rights standards in operations and use of data to hold state and other actors accountable; non-discrimination; equality and the rule of law.\textsuperscript{34}

\textit{b) Objective 2: Minimize the adverse drivers and structural factors that compel people to leave their country of origin.}

The government should aim at addressing the push factors especially those that force people to migrate such as conflict, diseases and unemployment and creating an enabling environment for people to lead a peaceful, productive and sustainable manner. This can be achieved if development agenda such as Vision 2030, the AU Agenda 2063 and the SGDs are effectively implemented at the local and national level.

c) \textit{Objective 3: Provide accurate and timely information at all stages of migration}

The right to information is guaranteed under Article 35 of the Constitution of Kenya subject to certain conditions. Information should be timely and accessible at all stages of the migration. There is need to monitor this right including during arrival, transit and destination to prevent or curb incidences such as trafficking in persons.

d) \textit{Objective 5: Enhance availability and flexibility of pathways for regular migration}

Promotion of regular migration reduces migration vulnerabilities. The government using the ILO standards needs to enter into human-rights based and gender -responsive bilateral, regional and multilateral labour mobility agreement in line with the labour markets. The cooperation agreements within the East African Community has created pathway for regular migration within the member states and this can be emulated with other states. In addition, the Cabinet Secretary to exercise powers delegated under the 2016 Citizenship and Immigration Regulations to support application for citizenship of registration for stateless persons, migrants and their descendants.

\textsuperscript{34} UNO HCHR (2018) A human Rights- Based Approach to Data: Leaving no one behind in the 2030 Agenda for Sustainable Development.
e) **Objective 6: Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work**

Whereas the National Employment Authority has done commendable work in vetting and accrediting registered private Employment Agencies, unaccredited agencies continue to recruit workers making them vulnerable to exploitation. Increased capacity to the Authority will aid in monitoring and enforcement of the law. In addition, the Authority should work with other agencies especially at the local level to disseminate information including sharing of translated and popular version of its “Pre-Departure Handbook”. Employment agencies should adopt best practices including International Recruitment Integrity System Standards and the UN Guiding Principles on Business and Human Rights. The state is called upon to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; to enable protection of all migrant workers; rights.

f) **Objective 7: Address and reduce vulnerabilities in migration**

This objective should be implemented in accordance with the government's obligation and commitments under international, regional treaties and national laws. There is need to undertake an audit and review laws and policies that exacerbate migrants’ rights. Strengthening the National Referral mechanism especially at the local level will enhance the protection of migrant rights. In addition, the development of a Migration Policy that is gender -responsive and contains; child-sensitive approaches and provision of assistance including legal, health and psychosocial support to vulnerable migrants is necessary.

h) **Objective 9: Strengthen the transnational response to smuggling of migrant and Objective 10: Prevent, combat and eradicate trafficking in persons in the context of international migration**

Proper implementation of the existing laws such as the Counter Trafficking in Persons Act and Organized Crimes Act to curb the smuggling of migrants and trafficking in persons. Review and amend laws to ensure they conform to international human rights standards. In addition, there is need for capacity building initiatives for key state agents at the local level to equip them with skills and knowledge to identify victims of trafficking and smuggled migrants; enforce laws on
employment recruitment agencies and monitor their operations. Awareness creation and stakeholder engagement including devolution of NRM to the smallest units at the community level. Further, the state should use transnational, regional and bilateral mechanisms to share relevant information and intelligence in its effort to end the practices.

j) Objective 11: Manage borders in an integrated, secure and coordinated manner and Objective 12: Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral

This can be achieved through offering prompt referral and assistance to vulnerable migrants, awareness creation to the public and public transport associations on pre-reporting. Increase transparency of the migration procedures and efficient use of ICT for communication and holding data; use of ICT however must promote personal security and data protection. In addition, cooperate with the Commission and other relevant institutions to review and revise relevant border screening procedures and interview processes to ensure migrants are treated in accordance with human rights principles. Engagement with the Commission and other agencies to build the capacity of staff members on human rights, victim protection, professional self-care and referral pathways.

l) Objective 13: Use migration detention only as a measure of last resort and work towards alternatives

Deprivation of liberty for migrants may in most cases is excessive especially for vulnerable migrants. The application of non-custodial measures should be encouraged. In Europe, Article 5 of the European Convention of Human Rights recognizes that detention of migrants for immigration related issues can only be used as a last resort. This practice can be adopted in Kenya. Alternatives to detention can include; surrender of travel documents, electronic monitoring, community-based care programmes, 3rd party surety or regular reporting to the authorities. Review and amend laws to make provision for non-custodial sentencing in certain cases. In addition, the Commission, the National Legal Aid Service and other state and non-state agencies based on their mandate to offer free or accessible legal services, and build the capacity on access to justice and human rights to relevant stakeholders. Judiciary on the other hand to ensure that legal pro-
ceedings are done in accordance with the law including due process and expeditious disposal of cases.

**m) Objective 14: Provide access to basic services for migrants**
The state to ensure that service delivery including health care, housing, education, legal aid, law enforcement and social benefits services does not discriminate against migrants. The establishment of referral pathway between service providers and immigration department can be a good way in ensuring that migrants access essential services seamlessly. The Commission to receive and investigate complaints on denial of basic service and facilitate access to redress; and work towards addressing the underlying cause to such practices.

**n) Objective 16: Empower migrants and societies to realize full inclusion and social cohesion and Objective 17: Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration**
Ensure that migrants’ social, cultural and economic rights are protected and promoted by implement existing laws on equality and non-discrimination and prohibition against any form of violence including hate crimes. Provide an enabling environment for migrants and protect the rights of those who defend their rights including human rights defenders. The relevant state agencies to create awareness on migration; and adopt the constitutional provision on public participation in migration governance. In addition, the involvement of local leaders and community gatekeepers is necessary for social cohesion.

**p) Objective 19: Create conditions for migrants and Diasporas to fully contribute to sustainable development in all countries**
Integrate migration into development planning and sectoral polices. Undertake research on other benefits other than diaspora remittances contribution towards development such as skills transfer. Strengthen the diaspora offices to support programmes, political participation, and accesses to services by migrants.
q) **Objective 21: Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration.**

Proper implementation of the non-refoulement laws and rights to effective administrative and judicial remedies. Using HRBA to establish reintegration programmes including legal aid, social and financial support to migrants for their return and readmission to their own country. Engage with consular authorities from countries of origin and destination by facilitating access to information and travel documents in order to safeguard safety and dignity in return or readmission.

r) **Objective 23: Strengthen international cooperation and global partnerships for safe, orderly and regular migration**

Increase cooperation between state and non-state agencies at the national, regional and international levels. Cooperation can include technical or financial support to implement the GCM. Meaningful engagement between the government and UN agencies, development partners, migrant groups and other relevant actors in addressing migration is vital. The engagement should be participatory, transparent and result oriented. Since migration is multi-faceted, there is need for policy coherence and consistency at the national and county levels. Policy coherence will foster collaboration and enhance proper service provision. The country needs a Migration Policy that conforms to international and regional human rights standards.

In addition to the above recommendations, the Commission in exercising its legal mandate will support national implementation of the GCM through;

a) Monitoring the implementation, follow-up and review at local, national, regional and global level of the GCM and other relevant human rights instruments;

b) Where applicable protect the rights of migrants through complaints processing, investigations and provision of relevant redress mechanisms;

c) Lobby the state to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the African Union Convention for the Protection and Assistance of the Internally Displaces Persons in Africa;
d) Offer technical assistance to the state by reviewing laws, policies, plans and indicators, including those developed in the context of furthering the implementation of the Global Compact for Migration, to ensure their compliance with international human rights norms and standards;

e) Offer technical support during the development of the National Action Plan on GCM and the finalization of the National Migration Policy;

f) Engage different stakeholders including GANHRI and NANHRI to promote local, national, regional and international dialogue on the GCM;

g) Undertake training and capacity building efforts for relevant agencies involved in migration work; and

h) When appropriate, undertake migration related research and ensure timely analysis and dissemination of research findings to inform relevant interventions.

References


Kenya Citizenship and Immigration Act (2011)


Kenya National Commission on Human Rights Act 2011


