

THE LABOUR MIGRATION MANAGEMENT BILL, 2023

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THE LABOUR MIGRATION MANAGEMENT BILL, 2023

A Bill for

AN ACT of Parliament to provide for the regulation of private employment agencies and the recruitment of Kenyans to work within and outside Kenya; to safeguard the rights and welfare of job seekers and migrant workers; to establish the Kenya Migrant Workers Welfare Fund and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

Short title and commencement. **1.** This Act may be cited as the Labour Migration Management Act, 2023 and shall come into force on such date as the Cabinet Secretary may, by notice in the *Gazette*, appoint.

Interpretation. **2.** In this Act, unless the context otherwise requires—

No. 3 of 2016. “Authority” means the National Employment Authority established under section 6 of the National Employment Authority Act, 2016;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to labour;

“Committee” means the Multi Agency Committee on Vetting of Private Employment Agencies established under section 7;

No. 12 of 2007. “Commissioner for Labour” means the Commissioner for Labour appointed under section 30 (1) (a) of the Labour Institutions Act, 2007;

“Director-General” means the Director-General of the Authority appointed under section 17 of the National Employment Authority Act, 2016;

No. 11 of 2007. “employer” has the meaning assigned to it under section 2 of the Employment Act, 2007;

“foreign employment” means the employment of a Kenyan citizen in a country other than Kenya;

“Fund” means the Kenya Migrant Workers Welfare Fund established under section 35;

“funeral grant” means a benefit paid to the next of kin of a migrant worker to defray the funeral expenses of the migrant worker;

“invalidity benefit” means a benefit paid to a migrant worker who suffers physical or mental disability that results in—

(a) permanent total incapacity as certified by a medical doctor; or

(b) partial incapacity of a permanent nature which makes him unable to earn a reasonable livelihood as certified by a medical board.

“job order” means instructions issued by an employer to a private employment agency to recruit employees on behalf of the employer and contains information on the job openings that the employer seeks to fill and the expected terms and conditions of employment;

“job seeker” has the meaning assigned to it under section 2 of the National Employment Act, 2016;

“labour attaché” means a public officer deployed to a Kenya Mission for labour and employment duties under section 10;

“labour officer” means a labour officer appointed under section 30 (2) (a) of the Labour Institutions Act, 2007;

“labour migration” means the departure of a Kenyan citizen from Kenya for the purpose of employment in any foreign country;

“legal assistance” includes—

(a) legal advice;

(b) legal representation;

(c) assistance in—

(i) resolving disputes by alternative dispute resolution;

(ii) drafting of relevant documents and effecting service incidental to any legal proceedings; or

(iii) reaching or giving effect to any out-of-court settlement.

“migrant worker” means a Kenyan citizen who—

(a) intends to migrate to a foreign country for work;

(b) is departing to any foreign country for work;

(c) is employed in any foreign country; or

(d) has returned to Kenya from a foreign country at the end of the of contract of employment or without having completed the duration of the contract of employment;

No. 12 of 2021. “Mission” has the meaning assigned to it under section 2 of the Foreign Service Act, 2021;

“pre-departure orientation” means a programme which equips a migrant worker with the knowledge, skills and attitude required to facilitate the integration of the migrant worker in a foreign country; and

“private employment agency” means a company, independent of the Government, which provides one or more of the following labour market services—

- (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationship which may arise therefrom; or
- (b) services consisting of employing workers with a view to making them available to a third party which assigns their tasks and supervises the execution of the tasks;

“relief assistance” means a benefit provided by the Fund, either in cash or in kind, to cater for the basic needs of a distressed migrant worker who suffers loss of income and includes food, shelter and clothing; and

“survivor benefit” means a benefit paid to the prescribed dependant relatives of a migrant worker upon the death of a migrant worker.

Objects of the Act.

3. The objects of this Act are to—

- (a) promote safe, fair, ethical and orderly recruitment of workers;
- (b) protect the rights of job seekers;
- (c) safeguard the rights and promote the welfare of migrant workers; and
- (d) promote opportunities for employment.

Application of the Act.

4. This Act shall apply to—

- (a) a private employment agency;
- (b) the recruitment of a Kenyan citizen for employment in Kenya and in any foreign country; and
- (c) a migrant worker.

PART II—ADMINISTRATION OF THE ACT

Functions of the
National
Employment
Authority.

5. The functions of the National Employment Authority under this Act shall be to—

- (a) register and regulate private employment agencies;
- (b) develop pre-departure programmes for migrant workers;
- (c) monitor the implementation of the pre-departure orientation programmes;
- (d) identify and create awareness on employment opportunities in any foreign country and facilitate access to the opportunities by migrant workers;
- (e) verify and approve job orders emanating from private employment agencies;
- (f) collect, analyse and disseminate data on foreign employment;
- (g) develop and implement programmes necessary to safeguard the rights and welfare of migrant workers;
- (h) develop and implement a return and reintegration programme for migrant workers;
- (i) receive and investigate complaints from migrant workers, job seekers, private employment agencies or any person; and
- (j) create public awareness on safe, regular and orderly labour migration.

Powers of the
Authority.

6. The Authority shall, in the performance of its functions under this Act, have the power to—

- (a) summon witnesses and require them to give evidence and produce exhibits that the Authority considers necessary;
- (b) cooperate and collaborate with other public entities, agencies, foreign governments, regional and international and organizations in the enforcement of this Act;
- (c) obtain professional assistance or advice from any person or organization as it considers appropriate; and
- (d) facilitate alternative forms of dispute resolution in disputes arising under this Act.

The Multi-Agency Committee on the vetting of Private Employment Agencies.

7. (1) There is established the Multi-Agency Committee on Vetting of Private Employment Agencies.

(2) The Committee shall consist of—

- (a) the Principal Secretary in the State department responsible for matters relating to labour or his representative;
- (b) the Principal Secretary in the State department responsible for matters relating to foreign affairs or his representative;
- (c) the Attorney-General or his representative;
- (d) the Commissioner for Labour;
- (e) the Director of Criminal Investigations or his representative;
- (f) the Director-General of the National Intelligence Service or his representative;
- (g) the Director of Immigration or his representative; and
- (h) the Director-General.

(3) The Principal Secretary in the State department responsible for matters relating to labour or his representative shall be the chairperson of the Committee.

(4) The Director-General shall be the Secretary to the Committee and shall not have the right to vote.

(5) The Authority shall provide the secretariat of the Committee.

(6) The Committee may invite any person, public officer or a representative of any body, who in the opinion of the Committee, has expert knowledge in matters relating to the functions of the Committee to attend any meeting of the Committee and participate in the proceedings.

(7) A person who attends a meeting under subsection (6) may, if invited, participate in any discussion at the meeting but shall not vote.

Functions of the Committee.

8. The Committee shall be responsible for vetting and approving applications for registration made by private employment agencies.

Reports by the

9. (1) The Committee shall submit an annual report to the Cabinet

Committee. Secretary within three months after the end of every financial year.

(2) The report under subsection (1) shall contain—

- (a) the activities undertaken by the Committee during the year;
- (b) the status of compliance with registration requirements by private employment agencies; and
- (c) any other relevant matter.

(3) Upon receiving the annual report under subsection (1), the Cabinet Secretary may make such recommendations to the Committee as he may consider necessary.

(4) Despite subsection (1), the Cabinet Secretary may, at any time, request for information from the Committee on any matter.

Labour attachés. **10.** (1) The Cabinet Secretary may deploy a labour attaché to serve in any Kenya Mission.

(2) Despite the generality of subsection (1), the Cabinet Secretary may consult the Cabinet Secretary responsible for foreign affairs before deploying a labour attaché to any Kenya Mission.

(3) The functions of a labour attaché deployed to a foreign country shall be to—

- (a) seek employment opportunities for Kenyans in that country;
- (b) authenticate job orders;
- (c) attend to complaints relating to migrant workers in that country;
- (d) visit workplaces and workers' accommodation facilities to assess working and living conditions;
- (e) monitor the implementation of bilateral labour agreements;
- (f) monitor the welfare of migrant workers and promote awareness to minimize violation of their rights;
- (g) collect and collate labour migration data and statistics on migrant workers in that country;
- (h) provide labour market information to migrant workers;
- (i) analyze and advise the Cabinet Secretary on the demand for foreign labour in the respective country;

- (j) attest foreign contracts of employment;
- (k) monitor situations and labour policy developments in the host country that may affect migrant workers;
- (l) facilitate the provision of counselling services to migrant workers;
- (m) supervise and coordinate the operations of safe houses for migrant workers in that country;
- (n) submit to the Cabinet Secretary quarterly and annual reports and recommendations relating to the conditions of migrant workers working in that country; and
- (o) perform any other function as may, from time to time, be assigned by the Cabinet Secretary.

(4) The report prepared under subsection (2)(n) shall contain the following information—

- (a) a list of migrant workers, with names of trades and professions they are employed in, their working conditions, benefits and challenges, if any;
- (b) a list of cases filed against migrant workers, if any, and details thereof, and information about workers detained or convicted of any offence;
- (c) a list of the migrant workers in distress, the nature of distress and any assistance or services offered by the Kenya Mission or the steps taken to resolve the problems of migrant workers, including counselling and legal assistance;
- (d) an estimate of the job opportunities for migrant workers in the respective country;
- (e) the status of the implementation of any existing bilateral agreement in the respective country; and
- (f) any other matter as may be specified by the Cabinet Secretary from time to time.

(5) A labour attaché shall, in the performance of his duties, be responsible to the Head of Mission.

PART III—PRIVATE EMPLOYMENT AGENCIES

Registration of a private employment agency.

11. (1) A person shall not operate a private employment agency unless the person is registered under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years, or to both.

Application for
registration.

12. (1) A person who intends to register a private employment agency shall apply to the Director-General for registration in the manner prescribed in regulations.

(2) Upon receipt of the application made under subsection (1), the Director-General shall submit the application to the Committee for vetting and approval.

(3) The Committee may, while assessing an application made under this section—

(a) summon and interview the directors of a private employment agency; and

(b) conduct any necessary investigations with regard to the application for registration.

(4) After assessing the application for registration, the Committee shall—

(a) if satisfied that the application for registration complies with the requirements of this Act relating to registration, approve the application and direct the Director-General to issue a certificate of registration in the prescribed form; or

(b) where the application does not comply with the requirements of this Act relating to registration, reject the application and require the Director-General to communicate such rejection to the applicant in writing, giving reasons for the rejection.

(5) Despite paragraph (a) of subsection (4), in the case of a private employment agency engaged in the recruitment of workers for foreign employment, a certificate of registration shall not be issued if the applicant has not paid to the Fund the contingency fee specified in section 14.

(6) A registered private employment agency shall display its certificate of registration in a conspicuous place at the premises where the business is carried on.

(7) A certificate of registration issued under this section is not transferable.

(8) A certificate of registration shall, unless cancelled earlier, be valid for a period of two years from the date of issuance.

(9) A private employment agency may apply for renewal of the

certificate upon expiry of the certificate.

(10) A person who contravenes subsection (7) commits an offence and shall, upon conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

Conditions for
registration of
private
employment
agencies.

13. (1) A person shall not be registered as a private employment unless—

No. 17 of 2015.

- (a) the person is duly registered as a limited liability company under the Companies Act, 2015;
- (b) all the directors of the company are Kenyan citizens;
- (c) the company has the minimum share capital prescribed in regulations;
- (d) the premises where the private employment agency is to be situated meets the requirements prescribed in regulations;
- (e) the directors and managers meet the qualifications prescribed in regulations;
- (f) the company is licensed to carry out business within the county of intended operation; and

(2) An application for registration of a private employment agency shall be rejected if—

- (a) the applicant provides, in the application, information which is false or incorrect;
- (b) the applicant does not meet the requirements for registration prescribed in this Act;
- (c) there is continued non-compliance with this Act by the applicant; or
- (d) the applicant or any of its directors have been convicted of human trafficking or human smuggling.

Contingency fee.

14. (1) Every private employment agency that is engaged in the recruitment of workers for foreign employment shall, upon receiving a notification of approval and notification of payment from the Director-General, pay a contingency fee to the Fund at the rate prescribed in regulations.

(2) The contingency fee under subsection (1) shall be—

- (a) valid for a period of two years and shall run concurrently with the validity period of the certificate of registration; and
- (b) used for the purpose of repatriation, paying wages and other entitlements in the event of default by the private employment agency or the employer.

Cancellation of registration.

15. (1) The Committee may cancel the certificate of registration of a private employment agency if—

- (a) any information given by the private employment agency is false or misleading;
- (b) the holder of the certificate of registration fails to comply with any requirement of this Act;
- (c) the private employment agency fails to file periodic returns;
- (d) the private employment agency violates any condition of the certificate of registration;
- (e) the private employment agency fails to comply with any direction or order issued by the Authority under this Act; or
- (f) registration was fraudulently acquired.

(2) The Committee shall, when cancelling the registration of a private employment agency, be guided by the provisions of the Fair Administrative Actions Act, 2015.

No. 4 of 2015.

Register of private employment agencies.

16. (1) The Director-General shall keep and maintain an up-to-date register of private employment agencies.

(2) The register shall be a public document and available for inspection by any person.

(3) The register under subsection (1) may be in electronic form.

Branches.

17. (1) A registered private employment agency that seeks to open a branch shall apply to the Director-General for registration of the branch in the manner prescribed in regulations.

(2) The Director-General shall upon receipt of the application, cause the premises to be inspected and shall—

- (a) if satisfied that the proposed branch meets the requirements of this Act, issue a licence; or
- (b) where the applicant does not meet the requirements for registration

of a branch, reject the application and communicate the rejection to the applicant in writing, giving reasons for the rejection.

Change of office

18. (1) A private employment agency that seeks to change its registered office or branch office shall apply to the Director-General for change of office in the manner prescribed in regulations.

(2) The Director-General shall upon receipt of the application, cause the premises to be inspected and shall—

- (a) if satisfied that the applicant meets the requirements of this Act and regulations, issue a licence; or
- (b) where the applicant does not meet the requirements of this Act, reject the application and communicate the rejection to the applicant in writing, giving reasons for the rejection.

Approval of job orders.

19. (1) A private employment agency shall submit every job order to the Authority for approval.

(2) Despite subsection (1), a job order for foreign employment shall be attested by the relevant Kenya Mission and thereafter submitted by the private employment agency to the Authority for approval.

(3) The Authority shall not approve a job order unless—

- (a) the terms and conditions of employment are compatible with the minimum statutory requirements; and
- (b) in the case of foreign employment, the employer has paid the prescribed fee.

Advertisement of jobs by private employment agencies.

20. (1) A private employment agency shall not issue any advertisement calling for applications for employment unless—

- (a) the Authority has approved the advertisement; and
- (b) the advertisement is in the manner prescribed in regulations.

(2) The Authority may, if satisfied that the proposed advertisement or notification calling for applications for employment complies with this Act, approve the issuance of the advertisement or notification.

(3) The Authority may refuse to grant approval under this section if it is satisfied that—

- (a) the nature of employment for which persons are to be recruited is degrading or inhumane;

- (b) the terms and conditions offered to the workers are not satisfactory;
- (c) the lives of workers would be endangered by reason of civil war or political disturbances in the country in which they are to be employed;
- (d) the health and safety of the workers would be endangered; or
- (e) the requirements prescribed in regulations have not been complied with.

(4) A private employment agency which has obtained approval under this section may advertise job vacancies within its premises, a public office or through the media.

(5) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding one year or to both.

Code of conduct
for private
employment
agencies.

21. The Authority may prescribe the code of conduct for private employment agencies.

Obligations of
private
employment
agencies.

22. (1) A private employment agency shall—

- (a) keep and maintain an up-to-date register of recruited workers and provide this to the Authority as and when required;
- (b) provide a contract of employment to a migrant worker at least three days before the date of departure;
- (c) ensure that a contract of employment complies with the provisions of any relevant written law, bilateral labour agreement and memorandum of understanding;
- (d) keep and maintain any record which, by regulations made under this Act, is required to be kept for a period of three years subsequent to the occurrence of the event recorded;
- (e) notify the Authority of any migrant worker who is in distress;
- (f) inform the Authority in writing of any change in the particulars stated in the application for a certificate of registration within thirty days of such change; and
- (g) file such returns as may be prescribed in regulations.

(2) A private employment agency shall not charge or receive in respect of anything done or to be done at an employment agency—

- (a) any fee or other payment or reward at a rate higher than that which may, from time to time, be prescribed for any particular area or class of business; or
- (b) any fee, payment or reward, unless provision has been made for the charging of such fee, payment or reward in regulations made under this Act:

(3) A person who contravenes subsection (1) or (2) commits an offence and shall, upon conviction, be liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding two years or to both such fine and imprisonment.

PART IV—PRE-DEPARTURE PROCEDURE FOR FOREIGN EMPLOYMENT

Pre-departure
orientation.

23. (1) A person who desires to travel to another country for purposes of foreign employment shall, unless exempted under this Act, undertake pre-departure orientation.

(2) The Cabinet Secretary may prescribe the categories of employees who shall undertake pre-departure orientation.

(3) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine not exceeding thirty thousand shillings or imprisonment for a term not exceeding three months or to both.

Foreign
contracts of
employment.

24. (1) Where an employer who is not resident in Kenya or a private employment agency intends to recruit a worker for foreign employment, the employer or the private employment agency shall arrange for the conclusion of a contract of employment between the employer and the worker.

(2) A foreign contract of employment shall be—

- (a) in the prescribed form;
- (b) signed by the parties to the contract; and
- (c) attested by a labour officer.

(3) A private employment agency shall be deemed to be a representative of a foreign employer and shall be liable with regard to any liabilities arising from the contract.

(4) A migrant worker who is recruited under a Government-to-Government arrangement shall have his foreign contract of employment attested in accordance with this section.

Attestation of
foreign contracts
of employment.

25. (1) A foreign contract of employment shall not be attested unless the labour officer is satisfied that—

- (a) the private employment agency that submits the contract is registered with the Authority;
- (b) the private employment agency has paid the contingency fee under section 14;
- (c) the employee has not been induced to enter into the contract through fraud, coercion, undue influence, mistake of fact or misrepresentation;
- (d) the terms and conditions of employment contained in the contract comply with approved job orders and the provisions of the employment laws;
- (e) the employee is medically fit for the performance of the duties stipulated in the contract and a medical certificate in the prescribed form has been given to the attesting labour officer in respect of that employee;
- (f) the employee is not bound to serve under any other contract of employment during the period provided in the foreign contract of employment;
- (g) the employee has undertaken pre-departure orientation; and
- (h) the private employment agency or migrant worker has paid the prescribed fee.

(2) The employee shall appear in person before the labour officer for purposes of attestation.

Security in
foreign contracts
of employment.

26. (1) Where an employer who enters into a foreign contract of employment does not reside or carry on business in Kenya, or where the employer resides in Kenya, the Commissioner for Labour may require the employer to give a security bond in the prescribed form, with one or more sureties resident in Kenya and approved by the Commissioner for Labour, for the due performance of the contract in such sums as the Commissioner for Labour considers reasonable.

(2) Where the employer has an authorised agent resident in Kenya, the Commissioner for Labour may require that the security bond specified in subsection (1) be given by the agent and the agent shall personally be bound by the terms of the bond notwithstanding the disclosure of agent's principal.

Offence to
induce a migrant
worker to
proceed abroad

27. (1) A person shall not—

under informal
contract.

- (a) employ, engage, or knowingly aid in the employment or engagement of a migrant worker with the intention that when so employed or engaged the migrant worker shall proceed outside the limits of Kenya unless the person has duly entered into a foreign contract of employment with the migrant worker in accordance with this Act; or
- (b) induce or attempt to induce a migrant worker to proceed outside the limits of Kenya without a foreign contract of employment that is concluded and attested in accordance with this Act;

(2) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or to both.

Registration of
migrant workers.

28. (1) A person who intends to travel to another country for purposes of foreign employment shall apply to the Authority for registration in the prescribed manner.

(2) An application for registration under subsection (1) shall be accompanied by —

- (a) an attested foreign contract of employment; and
- (b) proof of payment of contribution to the Fund.

(3) The Authority shall, upon reviewing an application under subsection (1)—

- (a) record the particulars of the worker in the prescribed manner; and
- (b) subject to the fulfilment of all requirements relating to migration, issue a clearance certificate to the migrant worker.

(4) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three months or to both.

Register of
migrant workers.

29. (1) The Authority shall keep and maintain an up-to-date register of migrant workers.

(2) The register under subsection (1) may be in electronic form.

(3) A copy of the register kept and maintained under subsection (1) shall be kept by every Kenya Mission.

Place of
departure.

30. The departure of a migrant worker for foreign employment shall be from a port of exit that is designated by the Director of Citizenship and Immigration.

Non-application
of Part to certain
persons.

31. This Part shall not apply to—

- (a) a person employed in the service of the national Government or county government, who, with permission from the competent authority, is going overseas to perform an official duty or for the purposes of education or training, or for employment with an international or multilateral organisation;
- (b) a student, trainee or a tourist;
- (c) the employment of seafarers;
- (d) a person emigrating for employment in a foreign government or international or multilateral organisation;
- (e) a person emigrating to a foreign country for the purpose of medical treatment and care, or for religious, business or investment purposes;
- (f) a dependant of any Kenyan citizen employed in a foreign country or lawfully staying in a foreign country;
- (g) a person who initially emigrated for education and later accepted employment in a foreign country; or
- (h) a person emigrating for a purpose which is not in conflict with the purposes of this Act.

PART V—ENFORCEMENT

Appointment of
inspectors.

32. (1) The Director-General shall, by notice in the Gazette, appoint duly qualified persons to be inspectors of the Authority for such jurisdiction units as shall be specified in the notice appointing the inspectors.

(2) An inspector shall—

- (a) monitor compliance with the provisions of this Act; and
- (b) perform such other functions as may be required under this Act and under the instrument appointing him.

Powers of
inspectors.

33. (1) An inspector may, without notice and at any reasonable time during the day, enter any premises for the purpose of conducting any search therein where there are reasonable grounds for believing that such entry or search is necessary for the prevention, investigation or detection of an offence under this Act.

(2) In the exercise of the powers conferred upon an inspector by subsection (1), the inspector may—

- (a) require a person managing a private employment agency to produce any books or documents which relate to his business and which are or have been in his premises or in his possession or custody, or under his control;
- (b) at any place require any person who has the possession, custody or control of any books or documents relating to the business of any person who is or was managing a private employment agency, to produce the books or documents;
- (c) examine and make extracts from, and copies of, any books or documents referred to in paragraph (a) or (b);
- (d) require an explanation of any entry in any books or documents referred to in paragraph (a) or (b); or
- (e) seize any book or document referred to in paragraph (a) or (b) that in his opinion, may be presented as evidence of the commission of an offence under this Act.

(3) An inspector shall, in the exercise of powers conferred by the subsection (2), exercise such reasonable care as to ensure that the smooth and efficient running of a private employment agency is not unduly interfered with.

(4) Every private employment agency and every person employed by the private employment agency, shall at any reasonable time, furnish such reasonable facilities as may be required by an inspector for entering the premises for the purpose of inspecting or examining the books and documents kept on the premises, or for making any inquiry in relation thereto.

(5) A person shall not—

- (a) make a false statement in any representation to an inspector investigating a case under this section which that person knows to be false in any material particular;
- (b) refuse to comply, to the best of his ability, with any requirement made by an inspector in the exercise of his functions under this section; or
- (c) hinder an inspector in the exercise of his functions under this section.

(6) A person who contravenes any provision of subsection (5) commits an offence and shall, upon conviction, be liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding three months.

Orders of the
Authority.

34. The Authority may issue to a private employment agency such orders as it may deem necessary for the purpose of making the employment agency to comply with the provisions of this Act or regulations made thereunder.

PART VI—THE KENYA MIGRANT WORKERS WELFARE FUND

Establishment
of the Kenya
Migrant
Workers
Welfare Fund.

35. (1) There shall be established a Fund to be known as the Kenya Migrant Workers Welfare Fund.

(2) The Fund shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;
- (c) borrowing money and making investments; and
- (d) doing or performing all such other acts or things necessary for the proper performance of its functions under this Act as may be lawfully done or performed by a body corporate.

Objects of the
Fund.

36. (1) The main objective of the Fund is to provide protection and assistance to Kenyan migrant workers during migration, stay in destination country and return to the country.

(2) Without prejudice to the generality of sub section (1), the specific objectives of the Fund shall be to—

- (a) provide relief assistance to migrant workers and their families;
- (b) provide invalidity benefits to migrant workers;
- (c) provide medical assistance to migrant workers;
- (d) provide assistance to migrant workers and their families during calamities in destination countries;
- (e) provide survivor benefit where a migrant worker dies;
- (f) provide funeral grant where the migrant worker;

- (g) provide psycho-social support to migrant workers and their families;
- (h) provide legal assistance to migrant workers involved in disputes with their employers;
- (i) repatriate migrant workers in distress or bring back the remains of a migrant worker who dies abroad;
- (j) collaborate with the relevant agencies to support skills development and recognition for migrant workers;
- (k) support pre-departure training programmes;
- (l) support return and reintegration programmes for migrant workers; and
- (m) create awareness and sensitise migrant workers and members of the public on labour migration.

Board of the
Fund

37. (1) The management of the Fund shall vest in a Board which shall consist of—

- (a) a chairman appointed by the President;
- (b) the Principal Secretary responsible for matters relating to labour or his representative;
- (c) the Principal Secretary responsible for matters relating to finance or his representative;
- (d) the Attorney- General or his representative;
- (e) the Principal Secretary responsible for matters relating to diaspora affairs or his representative;
- (f) one person nominated by the most representative federation of employers;
- (g) one person nominated by the most representative federation of trade unions;
- (h) one person nominated by the most representative association

of private employment agencies;

(i) one representative of migrant workers nominated by the most representative association of migrant workers; and

(j) the Chief Executive Officer of the Fund.

(2) The chairperson and the members appointed under sub-section (1) (f), (g), (h) and (i) shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

Qualifications
for appointment
to the Board

38. (1) A person shall be qualified for appointment as the chairperson of the Board if that person—

(a) holds a bachelors degree in the relevant field from a university or academic institution recognised in Kenya; and

(b) has at least ten years' experience in matters relating to labour migration.

(2) A person shall be qualified for appointment as a member of the Board under section 37 (1) (f), (g), (h) and (i) if that person holds a bachelor's degree in economics, accounts, finance, business administration, law, international relations or any other relevant field from a university or academic institution recognised in Kenya.

Powers of the
board.

39. The Board shall have all the powers necessary for the performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

(a) provide oversight on the administration of the Fund;

(b) approve policies to facilitate the attainment of the objects and purpose of the Fund and guide on, among others—

(i) the administration of the Fund;

(ii) services of the Fund;

(iii) investments on behalf of the Fund;

- (iv) risk management;
 - (v) resource mobilization;
 - (vi) corporate social responsibility.
- (c) review and approve the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary for approval and submission to the National Treasury;
 - (d) monitor and evaluate the performance of the Fund;
 - (e) promote access to the services of the Fund to migrant workers contributing to the Fund;
 - (f) review and approve the financial statements of the Fund before submission to the Auditor General;
 - (g) implement existing laws and regulations on the management of assets, equipment and all properties under the Fund;
 - (h) approve the opening and closing of bank accounts of the Fund in accordance with the existing laws;
 - (i) approve and monitor the strategic plan and annual work programme of the Fund; and
 - (j) advise the Cabinet Secretary on the operations of the Fund.

Vacation of
office by
chairperson or
member of the
Board.

40. The chairperson or member of the Board shall cease to hold office if the person—

- (a) resigns by giving notice in writing to the Cabinet Secretary;
- (b) is absent from three consecutive meetings of the Board without the permission of the appointing authority;

- (c) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
- (d) ceases to represent the interest in respect of which the member was appointed or nominated to the Board;
- (e) is otherwise unable or unfit to discharge the functions of the office;
- (f) contravenes Chapter Six of the Constitution;
- (g) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
- (h) is incapacitated by prolonged physical or mental illness; or
- (i) dies.

Conduct of
business and
affairs of the
Board.

41. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

(2) Except as provided in the Second Schedule, the Board may regulate its own procedure.

Committees of
the Board.

42. (1) The Board may establish committees, which shall consist of such number of members of the Board as the Board may deem appropriate to perform such functions and duties as the Board may determine.

(2) The Board shall appoint the chairpersons of committees established under subsection (1), from among its members.

(3) The Board may, where it considers it appropriate, co-opt any person from outside the Board with knowledge and expertise in specific areas to attend the deliberations of any of its committees.

(4) Any decision made by a committee established under subsection (1) shall be ratified by the Board.

Delegation by
the Board.

43. The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member,

officer, employee or agent of the Fund the exercise of any of the powers or the performance of any of the functions of the Board under this Act.

Remuneration
and allowances
of Board
members.

44. The chairperson and members of the Board shall be paid such remuneration or allowances as may be determined by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

The Chief
Executive
Officer of the
Fund.

45. (1) There shall be a Chief Executive Officer of the Fund who shall be recruited competitively by the Board.

(2) A person qualifies to be appointed as the Chief Executive Officer if that person—

- (a) holds a degree in economics, statistics, law, international relations or any other relevant field from a university or academic institution recognized in Kenya;
- (b) has at least ten years' experience in labour migration; and
- (c) meets the requirements of Chapter Six of the Constitution of Kenya.

(3) The Chief Executive Officer shall, subject to the directions of the Board—

- (a) be responsible for the day-to-day management of the Fund;
- (b) provide leadership to senior management and staff of the Fund;
- (c) prepare the annual budgets and establish proper internal controls;
- (d) be responsible for the execution and communication of the strategies, decisions and policies of the Board;
- (e) develop and recommend to the Board the annual plans for the Fund;
- (f) ensure that board papers are accurately written, are relevant and are availed to the Board members in good time;
- (g) ensure that the Fund has an effective management structure

including succession plans;

- (h) serve as the link between the Board and the Management;
- (i) be responsible for the achievement of the objectives of the Fund;
- (j) put in place effective administrative structures, processes and systems;
- (k) provide regular, thorough and prompt communication to the Board on key technical, financial and administrative matters;
- (l) be responsible for stakeholder management and the enhancement of the corporate image of the Fund; and
- (m) any other function as may be assigned from time to time by the Board.

(4) The Chief Executive Officer shall be an ex-officio member of the Board but shall have no right to vote at any meeting of the Board.

(5) The Chief Executive Officer of the Fund shall hold office for a term of three years, on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re-appointment for one further term.

Vacation
of office
by Chief
Executive
Officer.

46. The Chief Executive Officer of the Fund shall cease to hold office if the Chief Executive Officer—

- (a) resigns from office by notice in writing to the appointing authority;
- (b) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
- (c) is convicted of an offense involving dishonesty or fraud;
- (d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
- (e) is incapacitated by prolonged physical or mental illness;
or

(f) dies.

Staff of the Fund.

47. The Board may appoint such officers as are necessary for the proper discharge of the functions of the Fund under this Act.

The common seal.

48. (1) The common seal of the Fund shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The common seal of the Fund when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

Protection from personal liability.

49. No matter or thing done by a member of the Board or any officer, employee or agent of the Fund shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Fund under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

Liability of the Fund for damages.

50. The provisions of section 48 shall not relieve the Fund of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, whether wholly or partially, of any works.

Contributions by migrant workers to the Fund.

51. (1) Every migrant worker shall before departing the country for foreign employment—

- (a) register as a member of the Fund; and
- (b) pay contribution into the Fund in such manner and at such rate as may be prescribed in regulations.

(2) The contribution paid under sub section (1) shall be valid for the duration of the contract of employment of the migrant worker.

(3) A person who contravenes sub section (1) shall not be issued with the clearance certificate under section 28 (3) (b).

Monies of the
Fund and
investment
thereof

52. (1) The monies of the Fund shall comprise—

- (a) such monies as may be appropriated by the National Assembly for purposes of the Fund;
- (b) monies received as contributions under section 52;
- (c) contingency fees received from private employment agencies under section 14;
- (d) fees, charges, monies or assets as may accrue to or vest in the Fund in the course of the exercise of its powers or the performance of its functions under this Act or under any written law; and
- (e) all monies from any other sources provided for or donated or loaned to the Fund.

(2) The Fund may invest any of its funds which are not for the time being required to be applied for the purposes of the Fund.

Accounts and
audit.

53. (1) The Board shall cause to be kept all proper books of account and records in relation to all the undertakings, investments and property of the Fund.

(2) The Board shall, within a period of three months after the end of each financial year, prepare, sign and transmit to the Auditor General—

- (a) a balance sheet showing in detail the assets and liabilities of the Fund;
- (b) statement of income and expenditure of the Fund; and
- (c) such other statements of account as required by International Accounting and Audit Standards.

(3) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act, 2015.

Actuarial
valuation of the
Fund.

54. The Fund shall be valued by an actuary at least once in every three years.

PART VII—MISCELLANEOUS PROVISIONS

Restrictions on
labour
migration.

55. (1) The Cabinet Secretary may, by notice in the *Gazette*, restrict the migration of Kenyan workers to a particular country if the migration to that country may jeopardize public or State interest or the health and safety of the migrant workers.

(2) The Cabinet Secretary may, by notice in the *Gazette*, in the public interest or for preservation of human resources, temporarily restrict migration of a category of workers.

Repatriation of
migrant workers.

56. (1) The repatriation of a migrant worker and the transport of personal belongings, upon arrival in a foreign country, shall be the primary responsibility of the private employment agency which deployed the migrant worker and all costs attendant to repatriation shall be borne by or charged to the agency if—

- (a) the migrant worker is found, on medical examination, to be unfit for employment;
- (b) the migrant worker, for a reason for which he is not responsible, is not engaged after having been sent out of the country for engagement; or
- (c) the Authority finds that the worker has been engaged, or sent out of the country for engagement, by misrepresentation or mistake.

(2) Repatriation of the remains and transport of the personal belongings of a deceased migrant worker shall be facilitated by the private employment agency in collaboration with the employer.

(3) Despite subsection (1), where the termination of employment is due solely to the fault of the migrant worker, the private employment agency shall not, in any manner, be responsible for the repatriation of the migrant worker.

(4) A private employment agency that contravenes subsection (1) or (2) commits an offence and shall, upon conviction, be liable to a fine not exceeding five hundred thousand or to imprisonment for a term not exceeding two years or to both.

Bilateral labour
agreements.

57. (1) The Government may conclude a memorandum of understanding, a bilateral labour agreement or any other instrument with another country with a view to—

- (a) enhance safe, fair and orderly labour migration;
- (b) increase opportunities for migration by Kenyan citizens for foreign employment;

- (c) improve the management of labour migration;
- (d) improve the repatriation and reintegration of migrant workers; and
- (e) safeguard the welfare and rights of migrant workers and the members of their families.

(2) Any memorandum of understanding, bilateral labour agreement or any other instrument under subsection (1) shall be concluded on the basis of, among others, the following principles—

- (a) promotion of fair recruitment, protection of the rights, safety and human dignity of migrant workers within the country or while abroad;
- (b) the conditions of work in the concerned country are compatible with international standards; and
- (c) the right of a migrant worker to information and the right to redress are guaranteed if his rights are violated in the concerned country.

Appeals.

58. A person who is aggrieved by any administrative decision made under this Act, may appeal to the Employment and Labour Relations Court within thirty days of the decision.

Offences.

59. A person who—

- (a) engages in the deployment of a migrant worker in a job which is harmful to the health, security or dignity of the migrant worker;
- (b) substitutes or alters a foreign contract of employment that has been approved and attested by a labour officer without the approval of the labour officer; or
- (c) withholds the travel documents of a migrant worker before departure for monetary or financial consideration, or for any other reason, other than those authorized under this Act,

commits an offence and shall, upon conviction, be liable to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding two years, or both.

General penalty.

60. (1) A person who commits an offence under this Act for which no specific penalty is provided shall, upon conviction, be liable to a fine not exceeding six million shillings or to imprisonment term not exceeding twelve years, or to both.

(2) In addition to any penalty referred to in subsection (1), the Court may—

- (a) order the revocation of the certificate of registration; or

- (b) prohibit the doing of any act to stop the continued contravention of this Act.

Safe houses.

61. The Cabinet Secretary may establish safe houses in labour destination countries to provide temporary holding for migrant workers who are in distress.

Regulations.

62. (1) The Cabinet Secretary may make regulations necessary for the purpose of giving effect to, or for the better administration of this Act.

(2) Without prejudice to the generality of subsection (1), regulations made under subsection (1) may prescribe—

- (a) the forms to be used under this Act;
- (b) the manner in which registers are established or maintained under this Act, including the details or particulars required to be entered in the registers;
- (c) the content and duration of pre-departure orientation programmes;
- (d) the exemption of any area, occupation, organization or class of persons from any part of this Act;
- (e) the fees to be paid under this Act;
- (f) the fees which may be charged in respect of the business of a private employment agency;
- (g) the requirements for opening a branch;
- (h) the registration of migrant workers;
- (i) the records to be kept in respect of a private employment agency;
- (j) the premises to be used by a private employment agency;
- (k) the qualifications of any director or person operating a private employment agency;
- (l) the procedure for change of physical location of a private employment agency;
- (m) the filing of returns by a private employment agency;
- (n) procedure for alternative forms of dispute resolution including reconciliation, mediation, arbitration, conciliation and negotiation under this Act; and

- (o) the rate and manner in which contributions shall be paid into the Fund;
- (p) the eligibility criteria and conditions for accessing the benefits paid by the Fund;
- (q) the procedure for applying for assistance and payment of claims from the Fund; and
- (r) the procedure for lodging a complaint with the Authority.

Transitional provisions.

63. (1) A person who at the commencement of this Act is carrying on business as a private employment agency on the authority of a certificate of registration issued under the Labour Institutions Act, 2007 shall continue to carry on such business until the expiry of such registration certificate.

(2) Any administrative direction made by the Cabinet Secretary, the Commissioner for Labour, the Inter-ministerial Committee or the Authority under the Labour Institutions Act, 2007 which is in force immediately before the commencement of this Act shall have force as if it was a direction made by the Cabinet Secretary the Commissioner for Labour, the Inter-ministerial Committee or the Authority under this Act.

(3) Any statutory instrument made under the Labour Institutions Act, 2007 or the Employment Act, 2007 shall remain in force, so far as it is not inconsistent with this Act, until it is revoked by a statutory instrument made under this Act, and shall be deemed for all purposes to have been made under this Act.

PART VIII—CONSEQUENTIAL AMENDMENTS

Repeal of section 83 of No. 11 of 2007.

64. The Employment Act, 2007 is amended by deleting section 83.

Repeal of section 84 of No. 11 of 2007.

65. The Employment Act, 2007 is amended by deleting section 84.

Repeal of section 85 of No. 11 of 2007.

66. The Employment Act, 2007 is amended by deleting section 85.

Repeal of section 86 of No. 11 of 2007.

67. The Employment Act, 2007 is amended by deleting section 86.

Amendment of section 2 of No. 12 of 2007.

68. The Labour Institutions Act, 2007 is amended in section 2 by deleting—

- (a) the word “Director” and its accompanying definition; and
- (b) the words “employment agency” and the accompanying definition.

Amendment of
section 6 of No.
12 of 2007.

69. Section 6 of the Labour Institutions Act, 2007 is amended in subsection (1) by deleting the words “director of employment” appearing in paragraph (g) and substituting therefor the words “Director-General of the National Employment Authority”.

Amendment of
section 30 of
No. 12 of 2007.

70. Section 30 of the Labour Institutions Act, 2007 is amended—

(a) in subsection (1) by—

(i) deleting paragraph (b); and

(ii) deleting the words “and employment” appearing in paragraph (c); and

(b) in subsection (2) by deleting paragraph (b);

Amendment of
section 32 of
No. 12 of 2007.

71. Section 32 of the Labour Institutions Act, 2007 is amended —

(a) by deleting subsection (2); and

(b) in subsection (4) by deleting the words “the Director of Employment”.

Repeal of
section 33 of
No. 12 of 2007.

72. Section 33 of the Labour Institutions Act, 2007 is amended in subsection (1) by deleting paragraph (b).

Repeal of
section 36 of
No. 12 of 2007

73. The Labour Institutions Act, 2007 is amended by deleting section 36.

Amendment of
section 42 of
No. 12 of 2007.

74. Section 42 of the Labour Institutions Act, 2007 is amended—

(a) in subsection (1) by deleting the words “and the Director of Employment”; and

(b) by deleting subsection (3);

Repeal of
section 54A of
No. 12 of 2007.

75. The Labour Institutions Act, 2007 is amended by deleting section 54A.

Repeal of
section 54B of
No. 12 of 2007.

76. The Labour Institutions Act 2007 is amended by deleting section 54B.

Repeal of
section 54C of
No. 12 of 2007.

77. The Labour Institutions Act, 2007 is amended by deleting section 54C.

Repeal of
section 55 of
No. 12 of 2007.

78. The Labour Institutions Act, 2007 is amended by deleting section 55.

Repeal of
section 56 of
No. 12 of 2007.

79. The Labour Institutions Act, 2007 is amended by deleting section 56.

Repeal of
section 57 of
No. 12 of 2007.

80. The Labour Institutions Act, 2007 is amended by deleting section 57.

Repeal of
section 58 of
No. 12 of 2007.

81. The Labour Institutions Act, 2007 is amended by deleting section 58.

Repeal of
section 59 of
No. 12 of 2007.

82. The Labour Institutions Act, 2007 is amended by deleting section 59.

Repeal of
section 60 of
No. 12 of 2007.

83. The Labour Institutions Act, 2007 is amended by deleting section 60.

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SCHEDULE

1. Meetings

- (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
- (2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.
- (3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
- (4) The quorum for the conduct of the business, of the Board shall be six and no meeting shall be held or continued, notwithstanding that there is a quorum, unless the Chief Executive Officer or a person deputed by him is present.
- (5) The chairperson shall preside at every meeting of the Board at which he is present but, in the absence of the chairperson, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted, have all the powers of the chairperson.
- (6) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

2. Disclosure of Interest by Board Members

- (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:
- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.
- (3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

3. Execution of instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

4. Minutes

The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to

be entered in books kept for that purpose.

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MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to provide for the regulation of private employment agencies and the recruitment of workers within and outside Kenya and to safeguard the rights and welfare of job seekers and migrant workers. The Bill seeks to consolidate the laws relating to labour migration and proposes to repeal sections of the Labour Institutions Act, 2007 and the Employment Act, 2007.

Part I of the Bill provides for preliminary matters such as the interpretation of terms used in the Bill, objects of the Act and the application of the Act.

Part II of the Bill provides for the Administration of the Act. This Part stipulates the functions of the National Employment Authority under the Bill and specifies the powers necessary for the performance of those functions. It establishes the Multi-Agency Committee on Vetting of Private Employment Agencies which is responsible for vetting and approving applications for registration made by private employment agencies. This Part also outlines the functions of labour attaches.

Part III of the Bill provides for the registration of private employment agencies and the cancellation of such registration. This Part also provides for the payment of contingency fees into the Kenya Migrant Workers Welfare Fund by private employment agencies engaged in the employment of workers for foreign employment. The Contingency fee is intended to be used in the repatriation of migrant workers, payment of wages and other entitlements in the event of default by the private employment agency or the employer. It also provides for the approval of job orders and the advertisement of jobs by private employment agencies and the development of a code of conduct for employment agencies.

Part IV of the Bill provides for pre-departure procedures for foreign employment. This Part provides for pre departure training for migrant workers, the attestation of foreign contracts of employment and the registration of migrant workers. The Part also exempts certain classes of persons from the pre-departure procedures.

Part V of the Bill provides for enforcement of the Act and provides for the appointment of inspectors and their functions and powers.

Part VI of the Bill provides for the establishment of the Kenya Migrant Workers Welfare Fund which seeks to provide protection and assistance to Kenyan migrant workers during migration, stay in destination country and return to the country. It also provides for objects of the Fund, the composition of the Board of the Fund, the office of the Chief Executive Officer of the Fund and the staff of the Fund. It further provides for contributions by migrant workers into the Fund and sources of money for the Fund and investment of such money.

Part VII of the Bill provides for miscellaneous matters such as the establishment of the Migrant Workers Welfare Fund under the Public Finance Management Act., the repatriation of migrant workers, conclusion of bilateral labour agreements, appeals against administrative decisions made under the Act, general offences, general penalty, establishment of safe houses in destination countries, the power of the Cabinet Secretary to restrict labour migration and to make regulations and transitional provisions.

Part VIII of the Bill provides for consequential amendments to certain provisions of the Employment Act, 2007 and the Labour Institutions Act, 2007.

Dated the, 2023.

FLORENCE K. BORE,
Cabinet Secretary for Labour and Social Protection.

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