Free and Safe Movement in East Africa
Research to promote people’s safe and unencumbered movement across international borders

A report by the African Centre for Migration & Society, University of the Witwatersrand and Samuel Hall

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<tr>
<th>Acronym</th>
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<tbody>
<tr>
<td>AU</td>
<td>African Union</td>
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<tr>
<td>CBO</td>
<td>community-based organisation</td>
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<td>CFTA</td>
<td>Continental Free Trade Area</td>
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<td>CMP</td>
<td>common market protocol</td>
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<td>COMESA</td>
<td>Common Market for Eastern and Southern Africa</td>
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<td>CRRF</td>
<td>Comprehensive Refugee Response Framework</td>
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<td>CSO</td>
<td>civil society organisation</td>
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<td>DRA</td>
<td>Department of Refugee Affairs</td>
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<td>DRC</td>
<td>Danish Refugee Council (INGO)</td>
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<td>EABC</td>
<td>East African Business Council</td>
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<td>EAC</td>
<td>East African Community</td>
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<td>EAEIO</td>
<td>East African Employers Organisation</td>
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<td>EAEO</td>
<td>East African Legislative Assembly</td>
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<td>EATUC</td>
<td>East African Trade Union Confederation</td>
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<td>FGD</td>
<td>focus group discussion</td>
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<td>FMP</td>
<td>(Protocol on) Free Movement of Persons</td>
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<tr>
<td>ICDP</td>
<td>County Integrated Development Plan</td>
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<td>IDP</td>
<td>internally displaced person</td>
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<td>IGAD</td>
<td>Intergovernmental Authority for Development</td>
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<td>INGO</td>
<td>international non-governmental organisation</td>
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<td>IOM</td>
<td>International Organization for Migration</td>
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<td>JLMP</td>
<td>Joint Labour Migration Programme</td>
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<td>JRS</td>
<td>Jesuit Refugee Service</td>
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<td>KCCA</td>
<td>Kampala Capital City Authority</td>
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<tr>
<td>KUDHEIHA</td>
<td>Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers</td>
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<td>LAF</td>
<td>Legal Aid Form</td>
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<td>MIDIMAR</td>
<td>Ministry of Disaster Management and Refugee Affairs</td>
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<td>NDP</td>
<td>National Development Plan</td>
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<tr>
<td>NHIF</td>
<td>National Hospital Insurance Fund</td>
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<td>NSSF</td>
<td>National Social Security Fund (Act)</td>
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<tr>
<td>OAU</td>
<td>Organisation of African Unity</td>
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<td>OPM</td>
<td>Office of the Prime Minister</td>
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<td>PACIN</td>
<td>Pan African Citizens Network</td>
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<td>RAS</td>
<td>Refugee Affairs Secretariat</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>RCK</td>
<td>Refugee Consortium of Kenya</td>
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<td>RDB</td>
<td>Rwandan Development Board</td>
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<td>REC</td>
<td>Regional Economic Community</td>
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<td>RSD</td>
<td>refugee status determination</td>
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<td>SADC</td>
<td>Southern African Development Community</td>
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<td>TAREMINET</td>
<td>Tanzania Refugees Migration Network</td>
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<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<tr>
<td>YARID</td>
<td>Young African Refugees for Integral Development</td>
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FOREWORD

The research started with a question: what factors threaten the fulfilment of migrants’ rights, and what factors support these? The research team embarked on a multi-region study analysing migration policy and practices in Central, East and Southern Africa. This report reviews findings at the East African sub-regional level, at a time of growing attention to fostering mobility and mobility’s gain for protection and development.

Within the East African Community (EAC), we are focusing on Kenya, Tanzania, Uganda, Rwanda. Although the field work primarily focused at two sites each in two countries (Kenya and Tanzania), the synthetic report includes information and face-to-face interviews with key stakeholders from all four countries.

The goal is to empirically inform efforts to improve the governance and management of migration in East Africa. Speaking to migrants and border officials, civil society organisations and technocrats, we reveal some of the obstacles and entry points to better migration governance. Using a purely qualitative approach, this research shows how much can be uncovered through engagement, discussions and a pairing of researchers and lawyers on migration issues.

For the purpose of this report, improved governance means enhancing the protection of migrants as they move across territory with the goal of crossing international borders. The project is also concerned with migrants after they have entered countries in which they are not citizens. The project works from the position that while formal policy frameworks are often critical factors in determining the protection or violation of rights, they are by no means the only factor. The absence of policy and official engagement may allow for the relatively free and safe movements of people across borders. Lastly, it seeks to identify opportunities and obstacles to ‘progressive’ reforms, that is changing policies and practices that threaten the rights of migrants. Altogether, it takes stock of the structural environment affecting migrants’ mobility and rights in 2017–2018, and sets a baseline to track progress on migrant protection.

This report supports the work of Open Society Foundations, of civil society organisations (CSOs), and government representatives across a range of technical sectors to improve together and shape migration policy outcomes. It informs areas of cooperation, collaboration and grass root involvement. Bringing stakeholders to work together, bringing solutions closer to people and migrants’ lives, the end result is a synthetic report and two country reports reflective of a time of changing laws, policies and approaches to migration management in the EAC.
By its history and geography, East Africa has always been a region of high mobility. It is the first region on the continent to have initiated a somewhat successful economic integration process, as well as the one that has suffered, with full impact and for decades, the humanitarian consequences of the numerous armed conflicts in Central Africa and the Horn of Africa (Burundi, Eritrea, Central African Republic, Democratic Republic of Congo, South Sudan, Somalia). In many countries in the region, the latter situation has led to some rejection of refugees and economic migrants considered as the sources of the social and economic insecurity that citizens experience on a daily basis.

*Free and Safe Movement in East Africa: Research to promote people’s safe and unencumbered movement across international borders*, by the African Regional Office of the Open Society Foundations (AfRO) and the African Centre for Migration and Society of the University of Witwatersrand in South Africa, provides policy-makers and all those in East Africa interested in the effective management of human mobility and the protection of the human rights of migrants, whether voluntary or humanitarian, with valuable tools to build safe, orderly and regular migration policies at national and regional levels in line with the continental migration policy framework developed by the African Union.

The authors of the study characterise the region as one where migrants experience constant vulnerability that is the result of the combined action and decisions of the central and local authorities of the countries studied, in a context of combating insecurity in its most modern forms, namely terrorism, human trafficking and organised crime. This situation is apparently attributable to the fact that the Regional Economic Communities (RECs), the East African Community (EAC), the Inter-Governmental Authority for Development (IGAD), and the Common Market for Eastern and Southern Africa (COMESA), have limited ability to directly intervene when member states fail or refuse to implement regional frameworks that they have committed to through adopting protocols into national frameworks.

The problem is more complex when you look at it. First, it proceeds from a lack of knowledge of the different facets of regional migration, which leads to the fact that ‘[t]here is a lack of data on migration, which limits the ability to design evidence-informed public policy and humanitarian responses that adequately address protection gaps’ (p.2). In addition, REC policies are not adequately implemented in member states whose leaders, as is so frequently the case for refugees, make decisions that are in total contradiction with their treaty commitments on human rights.
There are also inconsistencies in the management of migration by states, including the lack of coordination of actions by the many bodies dealing with the issue. As the authors emphasise ‘the presence of a plurality of actors with divergent interests at stake; lack of funding; failure to include relevant stakeholders (particularly local authorities and migrants themselves)’ (p.13) do not provide protection to migrants.

One of the dramatic consequences of these political failures is the growth, particularly in Kenya and Tanzania, of an anti-migrant sentiment, exacerbated during electoral periods, which portray migrants as the source of all the wrongs of the community, particularly insecurity and job vulnerability. These are arguments that the central state, in turn, uses to develop and defend a security discourse that contributes to making the situation of migrants more precarious. As the authors claim, ‘[i]n the current climate, which links securitisation with border closures and restrictions on refugee protection in the region, the danger is that this will supersede any discussion on the benefits of migration for development, and the rights-based underpinnings that support such policies’ (p.14).

Regular migrants are also not better accommodated and their difficulties revolve around the following issues:

- Registration certificates, identity cards and permits;
- Barriers to accessing job markets;
- Absence of portable social security;
- Limited access to banks and loans; and
- Limited protection through civil society organisations and trade unions.

The study also identified good practices in some states that could inspire the rest of the EAC in its efforts to make immigration safer and regular. Rwanda has created an ‘occupational demand list’ to identify sectors that have skills gaps, which can help to set up a labour information system at the regional level.

The positive role played by devolved authorities and trade unions in some countries has also been stressed by the authors who consider that ‘they represent the few actors that make concerted efforts to work directly with migrant populations’ (p.22).

The report’s final recommendations include the establishment at regional and continental levels of a mechanism to monitor states’ migration policies, a centre for research and education on migration, the development of a more liberal national mobility policy and the systematic publication of information on migration opportunities in each country, the enhancement of dialogue between migrant organisations and national and local authorities, and the increasing involvement of trade unions in the defence of the rights of migrant workers.

As the African Union has rightly said, ‘Migration is inevitable, and needs to be better governed in an integrated manner through comprehensive, human rights
based and gender-responsive national migration strategies and policies’.* And for that reason, the Open Society Initiative for Eastern Africa (OSIEA) that I am leading will take advantage of the adoption this year by the African Union of the Protocol on the Free Movement of Persons in Africa and the Continental Free Trade Areas Agreement (CFTA) to give a renewed dimension to these recommendations by exploiting all the opportunities that the EAC and its partner states will offer to make the region the most open in terms of mobility on the continent.

**Mburu Gitu**

*Executive Director, OSIEA*

*August 2018*

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This study supports regional efforts to enable the free and safe movement of migrants within and around Eastern Africa. It aims to improve protection for all foreign migrants by identifying on-the-ground challenges that individuals confront in accessing and securing rights accorded to them in law. Legal and policy frameworks developed by the African Union (AU) and regional economic communities (RECs) – including the East African Community (EAC), the Intergovernmental Authority for Development (IGAD), the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC) – serve as the foundations to develop liberal migration regimes. Nevertheless, many protection issues remain unresolved in countries that are members of these supranational bodies. This research draws on field-based interviews with stakeholders representing RECs and actors based in Uganda, Rwanda, Tanzania and Kenya to design recommendations that aim to align practice with policy.

This report examines eight critical challenges to refugee and migrant protection that featured prominently in the 65 interviews and focus group discussions (FGDs) conducted among regional representatives, government officials, refugees, irregular migrants, staff of (international) non-governmental organisations (or (I)NGOs), migrant-led community support organisations, and other stakeholders between January and May 2018. Although the four countries this study covers have unique political structures, historical engagement with migrants and receptivity to non-nationals living and working within their borders, the challenges facing migrants are almost universal. There are systemic challenges that create gaps in migrants’ practical access to protection. Specific countries and localities have made advancements that can guide other contexts; this study aims to highlight these successes. At the same time, this regional report warns of the production of illegality in practice and across all four countries and of critical gaps in knowledge, attitudes and practices that hinder safer migration.
Knowledge gap

There is a lack of data on migration, which limits the ability to design evidence-informed public policy and humanitarian responses that adequately address protection gaps. Absence of statistics can compound problems for hard-to-reach and hidden migrant populations. At the same time, lack of data allows some migrants to design their own solutions beyond the purview of law and policy in a way that might otherwise be inhibited by formal systems.

Knowledge of migration frameworks is fragmented across all levels. The AU, RECs, national and local authorities, (I)NGOs and civil society organisations (CSOs) are privy to and access certain types of information and are ignorant of others. Overall, information on existing policies and legal frameworks is not adequately communicated to stakeholders, with a significant gap, for instance, between national and local authorities.

Coordination is underdeveloped across all levels. This is partially related to the underdevelopment of governance structures and the spread of migration responsibilities across government offices – from ministries of interior to dedicated migration or refugee departments or secretariats – which have diluted the need for clarity on a vision for migration. The lack of funding and coordination fora and the large number of relevant actors limit the extent to which the migration protection agenda can be moved forward in synch. This dynamic is a virtue in situations where greater coordination leads to more oppressive responses by authority figures, and a hindrance in situations where governments are pro-migrant but have limited ability to coordinate more effective interventions.

Attitude gap

Unproductive legal, policy and practice-based distinctions between refugee and non-refugee migrant populations serve to create vulnerabilities for individuals that do not fit the profile of target populations or of a specific class of migrants.

Social, cultural and political differences between host and migrant populations can correspond to an inhospitable discourse toward refugees and other migrants. Lack of empathy and concern frequently escalate during democratic elections when migrant existence can be easily politicised.

Continental, regional and national commitments are not upheld at the local level. In particular, local government administrators, police and border officials commonly restrict, fine and/or detain non-nationals in unlawful or unnecessary manners.
Gap in practice

Restrictive frameworks exclude refugees and irregular migrants. Policies, legal documents and humanitarian responses selectively exclude or limit particular groups of migrants from accessing protection in ways that reproduce vulnerability.

Most high-level stakeholders do not include and support the development of civil society actors. In spite of their profound knowledge of migrants’ needs and developments, CSOs and other civil society actors with limited resources have been historically omitted from conversations that aim to resolve humanitarian challenges. This research foregrounds their perspectives.

The interconnectedness of these protection challenges requires an expansive set of responses from governmental and non-governmental stakeholders across all levels. Interviews reveal that there are many constructive efforts under way to address the above challenges, particularly among RECs and CSOs. The report concludes with a set of recommendations for each type of stakeholder addressed in this study. Together, the recommendations emphasise the need for wilful and coordinated actions from all, particularly from government actors at the national and local levels, to address these gaps in knowledge, attitude and practice that prevent safer and freer migration from benefiting a protection and development agenda.
Introduction

East African countries have differing approaches to mobility and labour market participation. While the four countries concerned in this regional study – Kenya, Tanzania, Rwanda and Uganda – are legally and economically bounded by a number of overlapping RECs (EAC, IGAD, COMESA) that lay the foundation and opportunity to develop harmonised responses to migration, harmonisation of response has been variable at the national and subnational levels. Government actors – who control the admissibility and enforcement of decisions – take different approaches to mobility and the well-being of migrants.

Solutions require that i) state and local authorities have the capacity and incentive to implement commitments made under continental and regional frameworks to facilitate the free and safe movement of non-nationals; ii) resources are dedicated to a dialogue with CSOs, training of government authorities, awareness among migrants of their rights and capacity to uphold rights, so that any violations can be addressed; and iii) discussions centre on advancing the welfare of host and migrant communities alike, focusing on the collective benefits of a common market protocol (CMP) for economic development and poverty reduction. In the search for more equitable access to services, issues such as social protection, taxation and portable social security should also be discussed, to maximise the protection of migrants and the contributions they can make.

Previous qualitative and quantitative studies draw similar conclusions, demonstrating that migrants make significant contributions to the social landscape and local economies of communities (see Betts, Omata and Sterck, 2018; also Easton-Calabria, 2016). In settings where host communities are receptive to migrants, there are short- and longer-term opportunities for socio-cultural, political and legal reform that reciprocally benefit host and migrant communities (Kok, 1989; Taylor et al., 2016). This study develops this discussion by identifying the specific obstacles that migrants confront in achieving these ends. It transforms these insights into a list of recommendations that reflect stakeholders’ expert views on how to resolve these problems.
Long-standing efforts, persistent challenges

Africa’s RECs are building blocks for economic integration, peace and stability in regions throughout the continent. They are the implementing arms of the AU. Yet, in East Africa, while RECs have been central to generating high-level policy discussions, implementation at national and local levels remains a major challenge. A long history of efforts to develop transnational arrangements that would allow for free movement of Africans throughout the region and continent has gained significant traction in recent years at the AU and within regional fora. In particular, AU summits in early 2018 built unprecedented momentum and enthusiasm with the signing of the African Continental Free Trade Area (CFTA) and the Protocol on the Free Movement of Persons, and a commitment to the development of the African passport. This development and the expected ratification of these tools owe credit to the efforts by RECs and other regional bodies (e.g. the East African Trade Union Confederation [EATUC], the East African Employers Organisation [EAEO] and the East African Business Council [EABC]), which have pushed for the economic and social integration of countries across the continent. These dynamics are expanded upon in the next section, on the regional migration regime.

In spite of the optimism that continental and regional frameworks will be ratified, migrant vulnerabilities persist, particularly as a consequence of decisions and actions made by government actors at the national and local levels. These challenges include barriers to regular entry; continuation of the historical practice of encampment for refugees; restrictions applied to non-nationals in accessing the labour market; sustained ambiguity in clarifying and creating access to documentation and processes that allow access to rights conferred upon citizens; and ad hoc decisions taken by border officials. The section in this report on key challenges to free and safe movement details key obstructions migrants face in accessing protection mechanisms.

In spite of this legal framework that regulates labour migration in the region, policymakers still have a limited understanding of migration flows and dynamics (Samuel Hall, 2017).

This report unveils three themes in forwarding a common agenda on safe and free movement in East Africa. These themes are on migration knowledge, attitudes and practice. Whether it is the lack of knowledge on migration data or the fragmentation of knowledge, or whether these are border officials’ attitudes towards migrants or restrictions imposed on migrants, each of these layers is composed of challenges that prevent planning around safe and free movement of persons to lead to a vision of economic development and poverty reduction, and guidelines on how to achieve that vision and with whom. They synthesise eight challenges detailed in the section in this report on key challenges to free and safe movement. We ask what the implications are of these common themes and challenges. This paper sets out to respond to this question and pave a roadmap for action, starting with a discussion of the legal frameworks and contexts.
Empirical approach
This study takes note of on-the-ground realities as governments roll out large-scale interventions, including the World Bank’s IDA18 support mechanism and the global Comprehensive Refugee Response Framework (CRRF). It intends to balance the top-down perspectives and objectives with bottom-up voices and practice. Fieldwork was conducted in all four countries. In Kenya and Tanzania, for which two case study reports have been developed, interviews were held in one urban and one border location (in Nairobi and Garissa, and Dar es Salaam and Tanga, respectively); research in Rwanda and Uganda was conducted only in capital cities, both of which are home to many refugees and cross-border migrants. In total, 65 interviews and FGDs were conducted. Participants represent a range of actors, from migrants, to practitioners, to the private sector and local authorities. Fieldwork took place from December 2017 through May 2018. As a sign of the dynamism of discussions on safe and free movements in Africa, significant policy shifts occurred in the process of conducting this research – notably with the commitments made at the AU summit, the conclusion of the CRRF discussions and a change in trajectory of Tanzania’s commitment to a liberal refugee regime. These changes justify the need for greater commitment to informing new and existing approaches by involving government, non-governmental and civil society representatives.

Regional migration regime
The legal mechanisms that govern migration in East Africa are well developed and many – from continental, to regional, national and subnational levels. This review is interested in the RECs, their incorporation in national and subnational law, and their support to the safe and free movement of people in Africa. It is important for the reader to situate itself in the existing RECs as there are overlaps in membership and agendas, requiring a discussion on intra-REC dialogue on migration, safe and free movement in the region, and in implementing continental directives coming from the AU.

RECs and other regional bodies
Several RECs operate in East Africa in close conversation with the AU and national governments. Among them are the EAC, IGAD and COMESA, which bring together 21 member states. Kenya and Uganda belong to all three RECs.

In addition, there are a number of regional bodies that operate in close cooperation with RECs and governments to advance the agenda of specific interest groups. Representatives of these groups claim that their work is done in concert with RECs and governments to avoid duplication of efforts as they work toward common objectives. Of note, these include the EABC, the EAEO and EATUC. The three work closely to lobby and advocate for, among other issues: free movement of workers, reduction
and removal of fees and permits for entry and work, removal of non-tariff barriers, skills development, building regional labour market datasets, portable social security\textsuperscript{1} and other harmonisation efforts. Through joint position papers, collaboration with national labour unions and other domestic actors, and appearances before the East African Legislative Assembly (EALA), the EAC Secretariat, national legislatures and other decision-making bodies, these regional bodies have been able to help advance difficult agendas that RECs are pursuing in states in Eastern Africa and beyond.

**EAC: Regional model and powerbroker**

The EAC is one of the core ‘building blocks for the AU’\textsuperscript{2} and the most mature REC in the region. Representatives from other RECs speak of the EAC as a guiding model that has developed a strong framework for managing migration dynamics among its six member states (Kenya, Tanzania, Uganda, Rwanda, Burundi and, as of 2016, South Sudan). EAC’s successes (e.g. ratification of the CMP) have laid the foundation for IGAD and COMESA to develop similar tools of their own. Furthermore, progress at the AU level is dependent on the groundwork laid by the EAC, particularly as the enthusiastic progress of its member states (notably Kenya, Uganda and Rwanda) helps to secure buy-in from other African countries. This is exemplified by a recent statement from the EAC’s director general who claimed that full implementation of the Tripartite Free Trade Area bringing together EAC, COMESA and the Southern African Development Community (SADC) (another REC) is critical for ratification of the AU’s landmark CFTA because, among other reasons, ‘the Tripartite constitutes more than 60\% of Africa’s GDP [gross domestic product] and over half of the continent’s population’ (East African Community, 2018). The EAC is well resourced and capable of influencing continental and regional agendas.

The EAC’s CMP has been in force since 2010. It aims to ‘accelerate economic growth and development’, maintaining a liberal stance on the:

- Free movement of goods, persons, labour and workers;
- Rights of residence and establishment;
- Free movement of services and capital.

Underlying implementation of these objectives are operational principles of the EAC, including:

- Equal treatment and non-discrimination of nationals of other partner states;
- Sharing information and ensuring transparency in matters concerning the other partner states. (East African Community, 2010)

\textsuperscript{1} On this issue, these actors work also with the East and Central Africa Social Security Association (ECASSA), the East Africa Pension and Social Security Association (EAPSSA), and individual countries’ National Social Security Fund (NSSF).

\textsuperscript{2} Email correspondence, Didacus Kaguta, Peace and Security Officer, EAC, 12 May 2018.
IGAD: Measured developments among its diverse membership

IGAD has eight member states. The three states that overlap with the EAC (Uganda, Kenya, South Sudan) are considered to have among the most advanced frameworks when it comes to labour rights for migrants, economic exchange, and tools to allow visa- and fee-free travels for citizens of member states. Progress on refugee issues specifically is largely attributable to the focused work of the recently established Regional Secretariat on Forced Displacement and Mixed Migration, which facilitates collaborations between governments and the international community with the aim of securing regional and continental commitments. IGAD is currently developing its Protocol on Free Movement of Persons (FMP), incorporating many mechanisms that are similar to the EAC’s already implemented CMP. As IGAD ushers the FMP through the early stages of its development, they are working closely with their large and varied membership (which includes also Somalia, Djibouti, Ethiopia, Eritrea and Sudan) to build confidence that their protocol can eventually become as progressive as the EAC’s. States have expressed a number of fears about the ramifications that open borders will have on state and community security, labour market crowding, and government capacity to manage increased regional commitments. IGAD have taken a hands-on role in addressing members’ concerns early on, in advance of negotiations.

While all IGAD member states expressed their support for the idea of the free movement of refugees at the 2017 IGAD summit, no commitments have been made in writing. In the longer term, their objective is to have a similar set of progressive protocols as those seen among other RECs – in particular, in the EAC – with a suite of benefits for all classifications of migrants.

COMESA: Large membership, huge potential

COMESA is the largest trade bloc on the continent, with 19 current member states and plans to expand membership to Tunisia and Somalia later in 2018 (AllAfrica, 2018). At that point, their membership will cover 516 million people, nearly half of Africa’s population.

While COMESA is oriented toward market development and the free movement of goods, it also holds potential to facilitate the free and safe movement of migrants across a vast swathe of land, stretching from North Africa through the Horn, Central and East Africa, and into Southern Africa. Its overlap with the EAC, IGAD, SADC, the Arab Maghrebian Union, the Community of Sahel-Saharan States and the Economic Community of Central African States makes it uniquely placed to weave together different regional agendas. As yet, its migration-related work is underdeveloped. The inaugural Migration Dialogue for COMESA member states

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3 The only African REC that COMESA does not overlap with is the Economic Community of West African States (ECOWAS).
2. EAST AFRICAN SYNTHETIC REPORT

in 2017 laid the foundation for ratification of its Free Movement Protocol; similar arrangements in IGAD and the EAC aim to reduce barriers to migration through, among other considerations, the removal of visas, harmonisation of legislation and establishment of a comprehensive migration information system in the COMESA region (IOM Development Fund, 2018).

Obstacles and opportunities

In spite of differences among the national and subnational contexts in Rwanda, Uganda, Tanzania and Kenya, and in spite of the presence of several RECs that can support the governance of migration, challenges across all countries are broadly similar, albeit with different degrees of complexity and severity. Many challenges exist in guaranteeing the protection of refugee and migrant populations in East Africa, and across the continent more generally. Actors at all levels have identified issues that they confront in securing the rights of migrants. The most pronounced are implementation issues at the national and local government levels.

Discussions with regional actors conveyed the critical role that they play in identifying blockades to the development of legal and policy tools and their ability to work through them. All RECs have a strong record of targeting obstructions, designing informed responses, and building support for the adoption of new frameworks among member states. Nevertheless, their efforts are necessarily circumscribed due to their inability to transcend their role as international coordinating bodies. Specifically, the most acute problem is that RECs have limited ability to directly intervene when member states fail or refuse to implement regional frameworks that they may have committed to through adopting protocols into national frameworks.

Actors expressed having come to terms with the difficulties inherent in harmonising the many layers of global, continental, regional, national and local migration regimes. IGAD, for instance, have pragmatically adopted a graduation mindset when developing protocols, whereby they aim for small, cumulative victories that can lend to systemic and broad changes among their members and regional fora. In spite of difficulties in making quick progress across all vectors, actors by and large express a sense of hopefulness that improvements to migrant protections will be more accessible with time.

The numerous challenges that were discussed across the 65 qualitative interviews have been consolidated into eight categories, with supporting anecdotes and quotes to illustrate the consequences for migrants. They are matched with recommendations in the final section of this paper.
Key challenges to safe and free movement

**Lacking migration data**

Insufficient data limit the ability to design evidence-informed public policy and responses that adequately address protection gaps. Insights from fieldwork show that this increases the vulnerabilities of hard-to-reach and hidden migrant populations. Other studies are addressing this gap in greater detail (see Samuel Hall, 2018; IOM Development Fund, 2018). In all contexts under review, this data gap means that there are inadequate efforts to promote legal migration, which sustains a status quo that leaves migrants vulnerable to exploitation by employers and prevents poverty reduction and economic empowerment strategies from having broader impact in East Africa. Economic development is reduced because of the lack of ability to have data on migration. Protection and a rights-based agenda will also be reduced if a focus on refugee numbers and visa holders trumps data on access to markets, services and the ease of obtaining work permits. This imbalance produces a skewed view of migration and creates illegality in practice, which this report concludes on.

**Information on migration trends, but not on protection:** Government officials interviewed in Tanzania and in Kenya report having only general data on dynamics and trends in migration. All countries of the study have records of the numbers of refugees registered with the United Nations High Commissioner for Refugees (UNHCR), with most informants reporting that these databases underestimate the size of forcibly displaced populations. Across the board, these countries have less (or no) data about other migrant groups and about protection indicators in particular. While EAC partner states have been assigned to conduct assessments of how well they have facilitated freedom of labour, with an emphasis on carrying out personnel surveys to strategically address skills gaps in their countries, this process has had limited success. Rwanda and Kenya are reported to be the only countries to have completed the survey, collecting data on demographics, education levels and labour market skills; only Rwanda’s dataset has been made public. Absence of data collection systems and information undermines the ability to attract individuals with specific skills to their country and limits the design of protection responses. It also restricts the transparency of domestic hiring practices.

Rwanda has created an occupational demand list, exceeding requirements set by EAC, to identify sectors that have skills gaps. With this information, the government has provided for a year-long extension to individuals’ work permits if their skills match the vacancies, regardless of whether they are nationals of an EAC partner state or not.

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4 Uganda is the exception in this regard, with recent revelations that there are a significant number of ‘ghost refugees’ registered in urban settings and rural settlements. A countrywide verification effort is ongoing. See http://observer.ug/news/headlines/57503-verification-process-unearths-7-000-ghost-refugees-in-nakivale.html.

5 Skype interview, Jackie Pimer, Project Manager, Arcadia Advocates, Kampala, Uganda, 24 April 2018.
Tanzania has less regulated practices in place that rely on individual decision-making rather than nationally informed standards. While there are clear stipulations in national laws that privilege the hiring of citizens, government officials discuss that in practice, employers use their own criteria for recruitment. There is a reported preference for foreign workers who may have superior qualifications and who are also often paid less; there is limited incentive to encourage regularising their status. While similar issues exist in Uganda, the Kampala Capital City Authority (KCCA) has acknowledged the dearth of protection-related information for urban migrants and has pledged to improve these datasets in order to increase migrants’ access to services and the labour market.

By extension, there is also an absence of a labour market information system at the regional level. This is described as a hindrance to being able to communicate where job market vacancies exist, which is perceived to be a particular problem for EAC youth who have a high desire to migrate but are generally less well informed about opportunities in the region. EAEO and EATUC are currently conducting an information audit of labour market systems that exist at national levels to identify gaps. Their objective is to create a prototype that can be taken up by the EAC Secretariat and ministers for replication among partner states. In turn, they envision the reduction of irregular movement and illegal engagement in labour markets.\(^6\)

**Limited and fragmented knowledge of migrant rights**

Policies and legal frameworks that have been developed are not adequately communicated among all stakeholders. Practically, this means that instances of *refoulement*, of harassment by authorities, and of the creation of illegality have been noted from border to urban areas across all four countries and need to be addressed.

**Limited awareness of AU and REC-level protocols and tensions between national mandates:**

Almost all interviewees at the national and subnational levels were either unaware of supranational frameworks regulating movement and access to the labour market for migrants (e.g. the EAC’s CMP, the AU’s Protocol on the Free Movement of Persons, the UN’s 1951 Refugee Convention), or they said that they were rarely, if ever, discussed in their networks. At the regional level, there is no clearly articulated ‘theory of change’ available to ensure that there is awareness at the national level, downward, although IGAD, for instance, are developing a communications strategy – including use of community radio in local languages – to broadcast messages. This has onward impacts on all other complications having to do with migrant protection.

In Tanzania, the limited awareness of regional protocols exists in tension with national mandates. There are contradictory views of migration, with the Ministry of Economy explaining that migration generates growth, while the Ministry of Immigration adopts a securitisation discourse (ReDSS and Samuel Hall, 2015).

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\(^6\) Skype interview, Dan Okanya, Coordinator, EAEO, Arusha, Tanzania, 9 May 2018.
Local state representatives unaware of domestic legislation: Most local state representatives do not understand how their country’s legal system works, which endangers individuals who are subject to harassment and abuse at the hands of officials. Local representatives may, for instance, see a migrant and assume that the person is an irregular migrant. IGAD officials ‘provide training to local and municipal officials in international law, but still [they] see law enforcement being very heavy handed, even before they’d be able to identify an individual as an irregular migrant or refugee’. As a corollary to such profiling, informants reported direct or second-hand accounts of authorities issuing arbitrary fines, confiscating property, closing down businesses, making arrests and detaining migrants. In Uganda, an informant discussed that local police officers have wrongfully fined and confiscated the commercial property of migrants and refugees who work on the informal market as hawkers, in contravention of national policies that allow such enterprises.

In Rwanda, the Legal Aid Forum (LAF) has semi-annual trainings for local law enforcement. While not all authorities absorb all of the content from trainings – nor will all relevant actors necessarily attend – their ignorance of specific legalities does not inhibit them from calling on LAF when they encounter a migrant and are unsure of how to respond to a situation. This awareness-raising mitigates against the unchecked perpetuation of legally blind punitive actions perpetrated by local state representatives; this is a mechanism that can slow the production of irregular movements and engagement in illegal activities.

Hostile political climates also proved to be a threat to the protection of migrants transiting through some countries in the region. Key informants in Tanzania discussed the increasing incidence of Ethiopian migrants transiting through Tanzania on their way to South Africa and associated reports of border management arresting and detaining them.

Refugees and migrants unaware of rights and unable to uphold them: At all stages of interaction with the host country – including preparation for arrival, entry, the duration of their stay, and onward movement – migrants report that they are unaware of the rights and protections they are entitled to. This impacts the services and activities that they access as well as those that they do not, with great consequences for their labour market integration, use of social services and feelings of belonging.

Refugees, especially those living in urban areas, live in fear of getting arrested, detained, reported or returned, and are not aware of their protection rights. One respondent interviewed in Tanzania argued that ‘it is difficult to know what local protection is when you don’t have access to rights’. In Tanzania, most migrants interviewed did not have the necessary legal paperwork to work in the country. This was due to obstacles associated with national practices, including the unaffordable

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7 Interview, Caroline Njuki, Senior Programme Coordinator, IGAD Regional Secretariat on Forced Displacement and Mixed Migration, Nairobi, 4 May 2018.
8 Interview, Godfrey Ogena, Psychosocial Coordinator, JRS, Kampala, 30 April 2018.
9 Interview, Edward Chimbenje, Associate Legal Officer, Asylum Access, Dar es Salaam, January 2018.
costs and processing times for relevant permits. While employers are required to pay the fees for their employees' permits, in practice this burden falls on the employee.

The senior programmes officer at IGAD responded to these dynamics, suggesting that, ‘Even if law enforcement and other authorities don’t know the law, migrants should be educated about their rights so they can hold them accountable.’

Directors of two refugee-run CSOs in Kampala shared examples of this scenario, whereby local authorities were denying their CSO members access to permits; each director went home to print the legal guidance document detailing their rights (in these cases, the 2006 Refugees Act), presented it to the same official and were able to proceed.

**Coordination within and across levels**

Interviews indicate that different visions among stakeholders inhibit coordination and pose a challenge to progressing with the creation of more liberal migration regimes. Power structures most often result in top-down approaches that do not adapt to local contexts, absent considerations of what local communities may need. The migration protection agenda faces a number of coordination challenges for many of the reasons discussed in this section, including the presence of a plurality of actors with divergent interests at stake; lack of funding; failure to include relevant stakeholders (particularly local authorities and migrants themselves); and inconsistent, underattended and poorly structured stakeholder fora.

**Overlapping REC memberships:** The multiplicity of RECs with partner states in East Africa creates opportunities and challenges for coordination. It has already been discussed that the advances the EAC has made over the years have been of benefit to IGAD and COMESA, in particular. However, their overlapping memberships can create friction, as IGAD and COMESA partner states that are not part of the EAC express that they feel they are dragged into frameworks that have already been negotiated in the EAC without their input. These RECs make efforts to synchronise partner states’ visions as much as possible to ensure buy-in and satisfaction with regional developments. Nevertheless, the rate and content of progress that RECs can make is largely dependent on the will of partner states. Considerations such as Djibouti’s concerns about their labour markets being inundated should free movement be permitted have limited both the ambition and pace of developments for IGAD’s eight member states.

**States have different agendas and restricted motivations to commit to demanding regional frameworks:** In practice, even when commitments are made at the regional level, there have been difficulties in ensuring that member states are faithful to agreements made in these fora, particularly if the developments have not been ratified or domesticated into national law. Among EAC states, regional stakeholders have had difficulty bringing to bear the vision for unobstructed entry into member countries. This is

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10 Interview, Caroline Njuki, Senior Programme Coordinator, IGAD Regional Secretariat on Forced Displacement and Mixed Migration, Nairobi, 4 May 2018.
true in Tanzania, in particular, where EAC residents are still charged a visa fee on entry; this is no longer the case in Uganda, Kenya or Rwanda. Until Tanzania feels comfortable with the potential implications of visa-free entry for EAC nationals, this coordination challenge – which is only one of many – will remain an impediment to harmonisation of regional frameworks on free and safe movement of migrants.

Subnational monitoring of migrants: In some contexts, successful coordination across levels results in protection concerns for migrants. In Tanzania, efforts are increasing at the subnational level to monitor the presence of migrants. Interviews indicate that the Tanzanian government is stepping up efforts to trace migrants throughout the country, with border management officials relying on information provided by individuals within villages to inform on migrants for the central government. This subnational-national collaboration allows military personnel to arrest irregular migrants and to work closely with the immigration department to send migrants back to their country of origin.

Instead, national and subnational coordination should be framed from the perspective of local authorities. At the moment, even in countries with a devolved government – such as Kenya – migration is seen from the prism of immigration and national security. This interferes with the possibility of benefiting from devolution to advance integration measures. The securitisation of migration has had a negative impact in Kenya and in other settings in the region, blocking home-grown initiatives from the bottom up. The role of local government, non-governmental and civil society actors is necessary to ensure that devolution is used as a resource for solutions.

Distracting distinctions between migrant categories
Almost all discussions on safe and free movement for migrants are dominated by refugee-centred concerns, with little discussion on the potential, practices and protection needs of labour migrants and on the potential of mobility to support economic development in East Africa. The policy and discursive divide between refugee migration and labour migration further means that mobility is not conceptualised as a process sustaining communities in East Africa. In the current climate, which links securitisation with border closures and restrictions on refugee protection in the region, the danger is that this will supersede any discussion on the benefits of migration for development, and the rights-based underpinnings that support such policies.

Refugee populations are a focus of the international community and CSOs versus labour migrants. Mobilisation in support of migrants has centred on refugee protection: various government departments, NGOs, CSOs and INGOs are mandated to support refugees. Their legal rights are being addressed through partnerships between international organisations and civil society. The case studies review inroads in both Kenya and Tanzania: the role of CSOs has influenced policy in Kenya, while the role of CSOs is building up from scratch on migration issues in Tanzania.
Yet this does not mean that refugees, asylum-seekers and those whose cases are pending are immune to arbitrary arrest, detention and refoulement. Law enforcement officers have reportedly arrested and refouled asylum-seekers on transit in Kenya and Tanzania, trying to reach protection elsewhere. The practice is more prevalent in Kenya’s northern migration corridor bordering the Somalian and Ethiopian border in comparison to the western migration corridor (Uganda, Tanzania), highlighting the ethnic profiling of certain migrant groups. \(^\text{11}\) Political extraditions, contrary to the principle of non-refoulement, were reported during the fieldwork.

*Not all ‘voluntary’ migrants are the same – regular versus irregular status:* For reasons discussed in this section, migrants sometimes choose to enter a country by irregular means (i.e. without the requisite documentation or permits) or may become irregular after their regular status lapses (e.g. if their permit has expired). It is very difficult for INGOs and governments to get statistics on these populations because of the potential liabilities associated with irregular migrants making themselves known to authorities or service providers. When irregular migrants breach any regulations, they find themselves in more difficult situations than those who are in the country with regular status and go into hiding and are compelled to seek services informally or not at all. As compared to many other classes of migrants, irregular individuals do not have a list of entitlements. The International Organization for Migration (IOM) Uganda report that voluntary return is among the few legal options irregular migrants have to normalise their status; when migrants present themselves to their embassy for assistance, they are connected with IOM to facilitate the return process. \(^\text{12}\)

There are suggestions for alternative solutions in the Tanzanian context. An ongoing study highlights that, within the EAC, Tanzania has the highest proportion of migrants that hold passports but also has the largest proportion of migrants without legal documentation (Samuel Hall, 2018). Most of the intra-EAC movement to Tanzania comes from Kenya, constituting a large population of irregular migrants.

*Failure to regularise irregular migration status:* Feedback from local respondents interviewed shows a general lack of understanding of the potential of labour migration to contribute to development, as much for citizens as for non-citizens. Correspondingly, there has been limited systematic progress by governments in lowering requirements for migrants to achieve regularised status. One notable exception was Tanzania’s move in 2007 to extend more than 200,000 Burundian refugees the opportunity to receive Tanzanian citizenship. While the process was marked with a number of shortcomings in execution, it was applauded by the international community for its potential to incorporate vulnerable migrant populations into the nation’s social fabric and development agenda (Ensor, 2018). In spite of early commitments to continue along this progressive trajectory via the CRRF as one of 13 pilot countries, Tanzania

\(^{11}\) Interview, Joan Nyongesa, Assistant Programme Officer, Kituo Cha Sheria, Nairobi, 8 January 2018.

\(^{12}\) Interview, Jesca Angida, Senior Caseworker and Project Manager, IOM, Uganda, 2 May 2018.
withdrew from the process at the last minute in January 2018, citing security threats and lack of support from the international community.

**Inhospitable public discourse and social encounters**

In some contexts, social, cultural and political differences between host and migrant populations correspond with the development of inhospitable discourse toward refugees and other migrants. While xenophobia and discriminatory beliefs about migrants often map onto myth rather than reality, negative conceptions can have real-world consequences for migrants. Damaging discourses were reported to escalate during elections in Kenya and Tanzania, and to subside shortly thereafter, suggesting the politicised underpinnings of this phenomenon. A number of stock talking points, including accusations that ‘migrants are stealing our jobs’, that they consume more resources than they contribute, and depictions of migrants as thieves and criminals, can be confronted with evidence. This challenge is relevant to difficulties discussed in this report, particularly those having to do with the lack of data on migration protection, poor sharing of information and inadequate levels of support provided to local actors.

**Upholding continental and regional commitments at the national and local levels**

Interviews indicate that it is commonplace across Rwanda, Uganda, Tanzania and Kenya that local authorities fail to uphold the standards set by higher-level actors. In particular, local government administrators, police and border officials commonly restrict, fine and/or detain non-nationals in unlawful or unnecessary manners. Sometimes these practices are carried out from a place of ignorance; sometimes they are informed by securitisation logics or a place of abuse of power. Regardless of the underlying cause of violations or neglect, the encounters create short- and long-term vulnerabilities for migrant populations.

*Delegation of surveillance to local actors:* Government officials convey that securitisation discourses often overshadow discussions on free and safe movement, the right to work or access to services. In practice, securitisation rhetoric is trickling down from the national to the community level. Local residents report that they are being asked to denounce non-nationals – particularly irregular migrants and refugees – living in their midst.

The heavy reliance on local information in Tanzania is of particular concern. The local government capitalises on its proximity to community members, who it relies on to pass on information about irregular migrants. This collaboration also extends horizontally across government offices. While there is a department of immigration within each region, others are also included in the effort to track migrant numbers and presence in Tanzania: stakeholders include the ministries of home affairs and international relations, as well as the National Intelligence and Security Service.
Promising developments among subnational actors: Devolution in Kenya and mobilisation around county governments hold promises for transitional solutions for refugees and for formalising informal economic exchanges and systems that persist from Dadaab to Kakuma and Nairobi. The openness of county governments to explore joint resource allocation can be learned from and scaled to the rest of the region. The contributions to the protection of migrants and hosts will go through the contributions that county governments and CSOs are able to make in the fields of education and health, but also of taxation. Migrants may hold a key to much-needed fiscal revenue for county governments.

Underdeveloped support of localisation efforts: Instances of good practice that advance migrant protection at the local level are nevertheless undermined by the absence of adequate support mechanisms from central government and international actors. Interviewees expressed concerns about resource constraints centred on inadequate financing to support responses, understaffing or failure to communicate information across levels. These shortcomings reinforce the centralisation of power among national-level actors. In Uganda, the Office of the Prime Minister (OPM) Refugee Desk is said to have disproportionate influence over all decisions and access to services for migrants. In the absence of concerted decentralisation support mechanisms, local actors feel that they are underprepared to address protection concerns according to normative frameworks. One interviewee claimed that the OPM fails to communicate when handing responsibility for refugee response to local actors, such that populations of concern fall between the cracks.

Restrictive and hostile frameworks penalise refugees and irregular migrants

Most challenges that migrants encounter in accessing various forms of protection occur when confronting gatekeepers of particular rights and services. Therefore, local actors and government authorities tend to create the greatest obstacles for migrants. Additionally, INGOs generate challenges for refugees in particular. Actors’ policies, legal frameworks and humanitarian responses selectively exclude or limit specific groups of migrants from accessing protection. Lack of inclusion compounds and reproduces vulnerability.

These actors are simultaneously capable of, and in the best positions to resolve, such issues. By taking action to close the many gaps between policy and practice, these actors can make the progressive provisions for migrant protection set out in international, regional and occasionally national frameworks a reality.

National documentation – registration certificates, identity cards and permits: Documentation serves as the bedrock for accessing rights and entitlements within states, whether at arrival, departure or junctures in-between. Among all countries of the study, Uganda is the most advanced in terms of their systematic provision of documentation to refugees.
and migrants. The former group by and large possess registration certificates and refugee identity cards that allow them to access public services. Rwanda is attempting to achieve the same progress among its six camp-based populations and those resident in urban centres. Uganda is also the least punitive when it comes to monitoring that mobile migrants carry their documentation with them while in public. Comparatively, Kenyan authorities are said to be hyper-vigilant about stopping individuals in public who they perceive to be foreigners and checking their legal status. Anecdotally, a refugee in Uganda said such an encounter only occurred three or four times in the ten years that he lived in Kampala, whereas a foreign staff member of an INGO in Kenya said they could not count on their fingers the number of times they were stopped in Nairobi in the course of one year.

These surveillance-oriented encounters correspond with the general liberalness of a country’s migration regime. Beyond Uganda – whether in Kenya, Tanzania or Rwanda – movement is restricted, with official encampment policies in place in the former two countries. The most common process in which refugees in those countries engage with stakeholders is on documentation, particularly in getting refugee IDs, which have to be renewed regularly. For key informants, the current situation for refugees is perceived to primarily revolve around documentation rather than protection.

To access the right to work, migrants from East African countries generally have to provide identity documents in order to obtain work permits. Although African migrants in the four case study countries are often embedded in formal employment structures and entrepreneurship activities, they nevertheless report facing obstacles with regard to obtaining work permits. This is a particular challenge in Tanzania and Kenya. Lower-skilled migrants who may be less well connected to advantaged networks that are more adequately able to navigate different layers of bureaucracy, commonly assume it is impossible to obtain a work permit. This assumption is prevalent among labour migrants from EAC member states, who often cross into destination countries through relatively porous international borders. Comparatively, non-African migrants are said to hold an expectation that they can easily secure the relevant permits and documentation needed to facilitate their objectives.

Restrictions on international travel: In Uganda and Rwanda, respondents from CSOs, legal advocacy groups and NGOs shared that refugees are effectively not able to move outside of their host state legally unless they have retained original passports from the country they fled (which invariably expire and are highly

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13 This is a relatively recent accomplishment for Uganda. Not long ago, it was in the same situation that Tanzania is in now, where a majority of citizens did not have ID cards. In 2010, with the CMP adopted, Uganda clearly saw that it would not be able to live up to the commitments of free movement without a system of issuing IDs. IDs are a very new project in Uganda, but over the last three years almost everyone has come to possess an ID. This development has influenced similar processes in Kenya and Rwanda.

14 Skype interview, Rachel Sears, Chief Assessment and Employment Pathways Officer, Southern New Hampshire University, 20 April 2018.
unlikely to be renewed). The UNHCR can issue 1951 Refugee Convention travel documents (effectively a passport) to refugees in conjunction with relevant state authorities; however, it tends to be a cumbersome process for refugees. Indeed, there were multiple incidences of corruption reported within the UNHCR whereby a staff member demanded US$1 000–3 000 for issuance of the travel documents. The UNHCR staffer has since had his contract terminated following investigation. Nevertheless, the power asymmetry and abuse convey the precarity, difficulty and exclusivity of accessing the right to mobility. There are allegedly very few refugees that have been issued Convention travel documents, as they require significant resources (primarily social capital, more so than financial) to secure. Refugees involved in this study who did hold these documents were executives within their refugee-serving organisations; one claimed that without his passport he ‘can’t easily advance the needs of the organisation and our beneficiaries’.

Even when obtained, having a refugee passport is no guarantee that required international visas will be granted, nor indeed that transit and destination countries will recognise the documents as valid. Informants relayed multiple personal accounts of having their entry rejected and being sent back to their host state.

**Barriers to accessing job market:** Rwanda, Uganda and Kenya have satisfied EAC guidelines to waive work permit fees for migrants from EAC partner states. Tanzania exhibits reluctance, allegedly out of fear that foreigners will flood the labour market, and therefore has only reduced fee structures of EAC partner states. The EAC is working with the government to remove this barrier altogether. Meanwhile, for refugees, only Rwanda and Uganda make provision for the right to work; in Kenya and Tanzania, encampment policies go hand in hand with the expectation that refugees rely on humanitarian aid handouts. Their failure to champion a refugee self-reliance policy at the national level results in refugees’ dependence on work in the informal economy to earn incomes.

Even in contexts where there are technical provisions for refugees and migrants to work legally, there are a number of barriers. National or local policies and norms may privilege citizens over non-citizens. Employers may not be aware that they have the right to employ non-nationals; this is particularly true in relation to refugee job-seekers. And migrants themselves may not know which, if any, sectors they can participate in.

While RECs have concentrated their efforts – with great success in the EAC – on removing requirements for visas and fees for various permits, there remain non-tariff barriers for non-nationals. Countries can, for instance, stipulate that in order to have

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15 Interview, Bolingo Ntahira, Executive Director, Hope of Children and Women Victims of Violence, Kampala, 1 May 2018.

16 Refugees had a near-victory in 2017 when the Refugees Bill, which would have allowed more than 500 000 refugees in camps the right to work, made its way to President Uhuru Kenyatta. He rejected the Bill, citing lack of public participation during the drafting stages. See https://www.businesstodayafrica.com/economy/ Uhuru-rejects-bill-giving-refugees-right-to-jobs-and-land/3946234-4178936-xf36adz/index.html.

17 Interview, Jean Marie Vianney Hitamungu, Careers Director, Kepler, Kigali, 9 May 2018.
the right to work, they must meet minimum age requirements or earn a certain income in order to obtain permits. Barriers tend to privilege adults making large salaries, which is restrictive to both youth and lower-skilled individuals – often overlapping demographics that are most eager or desperate for job opportunities outside of their home countries.

**Absence of portable social security**: Failure to provide social security entitlements is a general issue in the case study countries. Developing portable social security arrangements between countries in East Africa ‘is light years away’. The only existing bilateral portable social security arrangement in Central Africa is between Democratic Republic of the Congo, Rwanda and Burundi. EAEo are researching the relative merits of the system and potential applicability to EAC partner states. At present, the most mature development concerning only EAC partner states is Kenya’s revised National Social Security Fund (NSSF) Act, which discusses the development of one-way ‘exportability’ of social security funds to any country in the EAC. The Act is in force but not in practice. To put it into practice, Kenya will need to sign bilateral agreements with other states or order reciprocal arrangements to incentivise all parties. These regional issues are being discussed in various fora in Nairobi and Kampala, with the objective that an arrangement be developed into an EAC Annex on portable social security. The continued non-existence of bilateral arrangements to allow for portability inhibits individuals’ participation in formal economies and diminishes migrants’ financial stability should they choose to move on – back to their country of origin or to another location.

**Financial exclusion – limited access to banks and loans**: Most traditional banking services and loan providers have discriminatory practices toward refugees and migrants with lower socio-economic statuses. The Danish Refugee Council (DRC), an INGO in Nairobi, reported that through persistent lobbying, it has helped more than 2 000 refugees open accounts that are currently operational and have been since 2015. Among them, only 100 have been able to access credit facilities. The challenge for accessing credit is alleged to pivot around ‘lenders’ fear that refugees could flee the country without paying back money’. While DRC has worked with other (I)NGOs to marshal evidence of refugees’ credit, government policy has historically proven an additional barrier, particularly in countries with encampment policies. In Kakuma camp, Equity Bank has tuned into the financial investments possible in that context. Similarly, in five of Rwanda’s six camps, refugees receive cash transfers through the World Food Programme and are also banked with Equity and have access to MasterCard debit cards. There are additional efforts by organisations such as the African Entrepreneurship

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18 Interview, Caroline Njuki, Senior Programme Coordinator, IGAD Regional Secretariat on Forced Displacement and Mixed Migration, Nairobi, 4 May 2018.
19 Interview, Eliza Mwendwa, Project Manager, DRC, Nairobi, 25 April 2018.
Collective, which works in Rwanda and is expanding into Uganda, and grassroots village savings and livelihood associations, which are particularly well developed in Uganda, to extend finance to migrants who have a difficult time accessing formal institutions.

**Inability to contribute taxes and derive associated benefits:** An ongoing study reveals that irregular migrants pay taxes and own bank accounts (Samuel Hall, 2018). Regularising their situation could simultaneously secure their protection, allowing them to access public benefits, and also yield larger benefits to local governments in terms of fiscal revenues.

**Failure to include and support civil society actors**

CSOs and other civil society actors have been historically omitted from processes that aim to resolve humanitarian challenges. In Kenya, Tanzania and Uganda, in particular, a number of CSOs are embedded in communities of concern. The impacts of their efforts could be strengthened with support from government offices and (I)NGOs.

**Limited CSO advocacy platforms for labour migrants:** As is the case among (I)NGOs, few CSOs are devoted to or focus on providing support to labour migrants; a majority are oriented toward forcibly displaced populations. This was generally attributed to the lack of international donor prioritisation of this population. Yet, the worthiest initiatives bridging the refugee–labour migration divide stem from CSOs in the region. Although sporadic and rare, precedents for advocacy, lobbying and planning have been set to allow for these to be scaled and replicated in the region, across contexts. In Tanzania, a network of CSOs and INGOs is mobilising efforts to reach out to urban refugees and other migrants. There is an existing base of CSOs working with refugees to improve their access to the asylum system. There are ambitions for the Tanzania Refugees Migration Network (TAREMINET) to provide access to services through mobile clinics, for instance, that can reach refugees and other migrants. The start of a conversation with authorities is planned for 2018 and provides an entry point for policy reform. Bilateral initiatives are also in place and can be supported to be scaled.

A notable exception to CSO mobilisation on migration is the Pan African Citizens Network (PACIN), a regional CSO based in Kenya that has been advocating for and writing policy briefs on labour migrants from Africa. Among its many recommendations is Kenya’s need to relax labour market and visa regulations for Africans to better facilitate free movement, and to limit irregular migration and human smuggling in the region to ultimately enhance the protection of migrants. The progress has, however, been slow, with setbacks emanating from the securitisation of migration, citizen-centric labour policies and corruption in government offices.

**Lack of inclusion in fora and decision-making processes:** However self-sufficient CSOs may become in developing responses for refugee and migrant populations, their
efforts will be defined as short-term emergency responses unless they are incorporated into information-sharing and decision-making spaces. While IGAD note that there are limitations to including civil society in their regional discussions, namely that there are few CSOs among their partner states working on relevant issues, efforts to include those that do exist can engender development of more civil society activity. The director of Young African Refugees for Integral Development (YARID) in Kampala discussed that the piecemeal support that his CSO has received over the years has equipped them to support migrant beneficiaries to create spinoff CSOs.\(^\text{20}\) NGO working groups operating at the country level are particularly accessible to CSO participation (as compared to meetings convened by government actors). Yet when NGO representatives were questioned about why CSOs were not present at a relevant meeting, various respondents said the thought had not occurred to them, that they were unaware of who exactly they would reach out to, or that they simply had not had the time to reach out to CSOs.\(^\text{21}\)

*Limited support mechanisms for self-reliance and livelihood development:* While high-level actors in Uganda and Rwanda, in particular, are pushing for refugee self-reliance agendas, refugees are frustrated with the actual support provided to fulfil this objective. One leader of a CSO in Kampala said, ‘Uganda is known for its self-reliance policy. For us in the field, we feel there is a very big gap between the expectations, which are very high, and the possibility for self-reliance, which is low; there are very few supporting mechanisms.’\(^\text{22}\)

*Limited numbers of migrants are unionised:* Union activity and vibrancy vary in the four case study countries, with Kenya hosting the most robust and vocal set of unions, while Rwanda has the least activity. In Kenya, labour unions are an untapped source of protection for migrant workers. The Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) is an example of a union that proactively fights for the improvement of working conditions for labourers, including for domestic and hotel migrant workers. Their main office in Nairobi serves both local and migrant workers. KUDHEIHA also has offices in Mombasa and Kisumu that serve migrants from nearby EAC partner states. They advocate for the inclusion of migrant workers in the scope of national labour legislation, attempting to rectify the high prevalence of workers with unclear terms of employment and barriers to registering with labour unions, as well as inclusion in formal national employment registers. While they are a valuable resource, KUDHEIHA are only able to assist migrants who are unionised, a very small fraction of non-national migrants working in the industry. They represent one of few actors that make concerted efforts to work directly with migrant populations.

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\(^{20}\) Interview, Robert Hakiza, Executive Director, YARID, Kampala, 30 April 2018.

\(^{21}\) Ibid.

\(^{22}\) Ibid.
Positive steps among countries and regional actors

Regional and national actors in East Africa are working on a continental agenda on the free and safe movement of migrants. While a coherent and broad-based application of this agenda is lacking, there are best practices (or infant best practices) that can be further supported as they have improved the protection of migrant populations and their contributions to national and local contexts. The following points address opportunities to build and learn from in order to scale and replicate initiatives across the region.

Uganda

- The Ugandan government has a long-standing commitment to encouraging refugee self-reliance through the unconditional allocation of land for agricultural development, universal issuance of refugee identity cards, and legislation and practice that supports refugees’ unobstructed freedom of movement throughout the country. The Refugees Act of 2006, which is currently being converted into a policy, is an internationally lauded document that enshrines these rights and serves as a model for other national contexts.
- KCCA is a local governmental actor that recognises the needs of the urban migrant population and is working alongside humanitarian and community-based organisations (CBOs) to proactively collect data on migrant protection in order to design evidence-informed urban responses. KCCA has responded to suggestions from INGOs to convene interagency symposiums to solicit input from on-the-ground stakeholders in order to learn from their operational experiences and to identify gaps in service provision. Their agenda, which intends to establish Kampala as a global leader in urban response, includes commitments to improving coordination across all levels, sharing data among stakeholders, supporting migrant self-reliance, fostering harmonious relations with the host community, continually improving their employment development centre and supporting other refugee-hosting cities in Uganda.

Rwanda

- LAF has trained lawyers who conduct semi-annual trainings for police, local state representatives and local leaders on migrant rights in localities with high densities of refugees and international migrants. The awareness-raising efforts aim to sensitise individuals of influence
to potential vulnerabilities and appropriate responses to situations involving migrants. LAF distributes their contact information so that authorities can refer refugees to receive free legal services.

• The Rwanda government has developed an occupational demand list that identifies sectors that have skills gaps. With this information, the government has provided the possibility for individuals with skill sets that satisfy the identified vacancies to receive a year-long extension on their work permit. The occupational demand list has been made public and provides empirical data that can inform policy-making decisions.

• The government has published comprehensive documents outlining procedures for obtaining visas, residence permits, work permits and business licences online. By making these available on ministry websites, the government increases the visibility and transparency of these processes, thereby mitigating against abuse; they also serve as a tool to enable migrants to claim and assert their rights.

• The Ministry of Disaster Management and Refugee Affairs (MIDIMAR) is currently undertaking a countrywide initiative to collect advanced biometric information for all refugees in camps and urban settings in order to issue IDs to all refugees. They have committed to issuing IDs by July 2018, which will improve refugee access to public services and labour market opportunities.

Tanzania

• TAREMINET works with vulnerable non-nationals in Dar es Salaam irrespective of their legal status. This inclusive orientation is uncommon among humanitarian service providers, who tend to target refugees and other forcibly displaced populations. The consortium of NGOs advocates for protection of migrants, including asylum-seekers and refugees, and provides direct legal and humanitarian assistance. They also work with the government to advance a more rights-based migration regime. By increasing their membership and formalising their organisation from 2011 to the present, TAREMINET has been able to significantly expand its engagement with urban irregular migrants and refugees who are often hidden and hard to reach.

Kenya

• CSOs in Kenya have transitioned from opposing to influencing key government decisions and holding national actors legally accountable to their commitments. In December 2012, when the government of Kenya announced a directive for urban refugees
to be relocated in camps, CSOs appealed the decision in the High Court. The ruling was unanimous in that the decision was unconstitutional. The key challenge today for CSOs is to downplay the securitisation agenda on migration, which prevents the decentralised management of refugees and migrants.

- A network of (I)NGOs is working to lobby banks to extend services to refugees, while a new platform called Techfugees in Kenya is bringing together the technology sector and the aid sector to support innovative solutions to forced displacement.

**Regional level**

- Regional bodies such as EAEO, EATUC and EABC have significant influence over regional dynamics and developments. Their close coordination with RECs and governments fills critical information gaps through publication of position papers, presentations, collaboration with national labour unions and other domestic actors, and appearances before EALA, the EAC Secretariat, national legislatures and other decision-making bodies. Their advocacy efforts have built political will among national governments, advocating for, among other issues: free movement of workers, reduction and removal of fees and permits for entry and work, removal of non-tariff barriers, skills development, building regional labour market datasets, portable social security and other harmonisation efforts.

**Recommendations**

The continental and regional frameworks need to be domesticated at national and local levels. To guide this process, the recommendations are targeted at all actors – from the AU to the RECs, national and local governments, international and national NGOs, as well as civil society actors and the private sector. Mainstreamed across the recommendation is the necessity to maintain a learning agenda to measure and support the gains that can be made from safer and freer migration. Further research is required to learn from the successes of RECs across the continent to understand how to advance difficult agendas, implement policy, dispel ‘myths’ surrounding refugee and other migrants’ impacts on societies, and to advance narratives of their contributions at home and abroad.

**African Union**

- Maintain close contact with REC focal points. As RECs advance their agendas, the AU can follow in their wake to push forward rights frameworks at the continental level.
• Establish accountability mechanisms to ensure governments’ adherence to and implementation of regional and continental protocols.
• Convene regular intra-REC meetings with their migration and displacement focal points, supported by an independent group of academics, experts and practitioners to ensure that REC commitments are monitored and informed by evidence-based data.
• Fund academics and legal centres to run education initiatives to increase awareness among authorities of migrant rights and contributions in contexts of safe and free migration.

Regional economic communities

• Harmonise the implementation of REC frameworks, including the removal of visa, residence and work permit fees among member states.
• Monitor and evaluate the implementation of the Free Movement Protocol and publish findings, notably at the level of governments and localities.
• Identify activities that can enhance implementation of the protocol:
  – Research that can highlight economic gains of mobility;
  – Positive practices within member states and learning initiatives.
• Advocate for:
  – Opportunities for NGOs/CSOs to attend REC gatherings;
  – Regional initiatives such as portable social security benefits.

National governments

• Provide and facilitate:
  – Visas on arrival for all African citizens;
  – The easy issuance of travel documentation;
  – Decreases in fees and processing requirements for work permits;
  – Increased budgets to local authorities;
  – Youth-sensitive approaches such as removing minimum-age requirements.
• Draft and publish:
  – Information on government websites on classification of migrants and procedures to follow;
  – National development plans in close consultation with CSOs and (I)NGOs with all migrant classifications.
• Establish:
  – Occupational demand lists to reflect sectors that have skills gaps. Provide permit extensions for eligible candidates;
  – Clear sets of rights and entitlements for employed non-nationals.
• **Capitalise on opportunities to extend benefits to host communities** (e.g. via the World Bank’s IDA18 funding mechanism) and to migrants in the region (e.g. through portable social security schemes).

**Local authorities**
• Create structures and processes that allow migrants to contribute locally and to access their rights through local service provision:
  – Allow migrants to contribute locally by:
    ° Providing opportunities for labour market participation;
    ° Providing resident IDs to open bank accounts and get permits;
    ° Collecting taxes from migrants and migrant-owned businesses.
• Reduce or waive fees associated in accessing public, professional and post-secondary education.
• Ensure that migrants have access to documentation and registration of businesses so that they can make fiscal contributions.

**International and domestic NGOs**
• *Provide information* to improve awareness of migrants’ rights.
• *Ensure oversight* of issuance of documentation.
• *Maintain working groups* and referral pathways for all classes of migrants.
• Identify national representatives and offices that can advance migrant rights.
• *Provide data* that can inform government and regional policies.

**Civil society organisations**
• Establish networks and secure technical resources on safe and free movement:
  – CSOs to share first-hand experiences of best practice and insights for navigating national and regional systems;
  – Regular town hall meetings to share the challenges, successes and opportunities in improving the protection of migrants;
  – A roster of legal specialists and resources available to be consulted by government and non-governmental offices when legal issues arise that implicate migrants.
• Support dialogue between local authorities and migrant groups:
  – Training and sensitisation programmes for local authorities and roll-out regularly within communities for judiciaries, immigration officers, police and border officials;
  – Tools to support migrants’ development of self-reliance including language programmes, market-driven skills training
programmes, business skills training and savings programmes, and school support.

- Educate employers and private sector about the possibilities and requirements for employing migrants; where unions do not exist, through government offices that deal with businesses.
- Share and distribute information with migrants on their rights, including entitlements and copies of relevant national legislation to present to gatekeepers for public services and to potential employers.
- Advocate for:
  - The inclusion of migrant groups in national policy frameworks;
  - New initiatives that advance migrant protection;
  - The development benefits of migrant contributions.

Private sector

- Carve out designated spaces and sectors in which non-nationals can run and support existing businesses.
- Provide innovative livelihood opportunities to expand opportunities for workers that have difficulty accessing the traditional market.
- Create alternative financial systems for migrants; involve banks and micro-finance institutions to develop or extend access to lending programmes that match the unique features of migrant individuals and communities.

Country profiles

Of the countries examined in this study, Uganda is perceived by respondents as having the most liberal migration regime and in practice is often faithful to its pledges. Rwanda is close behind, developing progressively more liberal policies and practices in line with its multiple obligations. By comparison, Tanzania and Kenya are relatively restrictive, with strict limitations on movement of refugees and protectionist migration regimes that make it difficult for non-nationals – particularly low-skilled migrants – to migrate for work. As a group, these four countries have relatively more formalised frameworks governing their migration regimes and possess the ability to control and enforce dynamics, compared to surrounding countries, which are variably affected by destabilising conditions: conflict, corruption and other political, humanitarian and development challenges.

Uganda: Role model in the region?

Uganda is often categorised as a hospitable country for non-nationals, best exemplified by the approximately 1.4 million refugees (primarily of South Sudanese, Congolese
and Rwandese origin) currently living in settlements and urban areas throughout the country, alongside local communities. Through the Refugees Act of 2006, the government has promoted free movement and right-to-work arrangements for refugees, which, while imperfect, can promote access to various protection mechanisms and contribute to the social incorporation and development of local economies. The framework is lauded internationally. The Act is nearing the end of a years-long process of becoming a policy, which ‘will give it more teeth, ensuring that refugees are better able to access protection’.23 Furthermore, the 2040 National Development Plan (NDP) integrates refugees into the framework, delineating access to the same services in education and health, for example. The NDP demonstrates unparalleled public efforts to account for non-nationals: ‘If we plan for refugees, we can prepare public institutions to be supplied with more adequate resources in the future.’24

As compared to other countries of the study, there was limited concern about non-refugee migrants; no informant believed them to be significant in number. ‘Uganda is a transit country for labour migration – most want to go to Kenya or Tanzania. International migrants that do come here are often assumed to be refugees and are treated that way.’25 As such, no interviewees spontaneously mentioned non-refugee migrants, showing a one-sided view of mobility’s potential to contribute to the country.

One of Uganda’s hallmark Acts is its long-standing, free-of-charge distribution of viable agricultural land to refugees. Uganda’s increasing refugee caseload is decreasing the size of plots of land. This has become a common talking point among informants, who express concern over the sustainability of such a refugee regime. Nevertheless, there is an air of optimism that Uganda’s tradition of hospitality will continue, as embodied in the government’s participation in the CRRF as a pilot country and their participation in the World Bank’s IDA18 support scheme.

There are nevertheless a number of shortcomings reported on the ground. While refugees have easy access to refugee identity cards, there is often a lack of understanding of the rights associated with the document. Although refugees may be able to self-settle in urban areas, there are limited support structures in place – a reality that the KCCA are vigilantly attempting to improve. It is possible for refugees to seek employment; however, in practice, high levels of unemployment throughout the country and indiscrete nationalist sympathies mean that Ugandan applicants are often privileged. Those that want to create their own businesses or organisations are technically able to do so; however, local authorities are reported to obstruct or undermine their efforts. They have the ability to be banked, but it is difficult to secure loans and so refugees turn to more modest community lending groups. There are lower levels of harassment

23 Interview, Jesca Angida, Senior Caseworker and Project Manager, IOM, Uganda, 2 May 2018.
24 Interview, Godfrey Ogena, Psychosocial Coordinator, Jesuit Refugee Service (JRS), Kampala, 30 April 2018.
25 Interview, Professor Kalyango Ronald Sebba, Makerere University, Kampala, 1 May 2018.
of non-nationals in Uganda than in other countries of this study; however, refugees report cases of wrongful fining and arrest.

All actors maintain that refugees in Uganda are relatively well off when considering circumstances in other countries. Progress to date is attributed to a wide group of actors but remains centralised. Informants mentioned the important role of the OPM Refugee Desk in advancing the government’s agenda. However, there were concerns that ‘everything is centralised at the high ministerial level with OPM; when you’re down at the division level, there is no information for refugees, so, for instance, people on the ground don’t know about the Refugee Act’. Consequently, local CSOs and NGOs made calls that OPM expand its presence beyond its current bases in the capital and the four most impacted settlements on the periphery of the country.

There are nevertheless a significant number of developments that can be improved upon in the country, as will be attempted through CRRF, and that can serve as a model for other less developed migration regimes across the region. While not wholly replicable, there were reasons given for the success of their reputable open-door policies, including that: many of their leadership have been displaced over the years and so there is a common understanding of what it means to be displaced; they have a long history of hosting foreign populations, pre-dating independence; and borders touch so many countries, with adjacent communities and fellow tribesmen who are related by blood or treated as family. Many media and academic outlets have further investigated and broadcast these narratives, which has been an additional source of support in developing a progressive refugee regime (see, e.g., Betts et al., 2016; The Economist, 2018).

**Rwanda: Willing and able leader?**

Rwanda is an emerging leader with respect to both its refugee and migration regimes. Developments within the country’s refugee regime look particularly good on paper: as a CRRF pilot country, they will use IDA18 funds from the World Bank to develop a more progressive set of policies and practices. Already, refugees officially have the right to free movement in the country, including the ability to self-settle in urban areas, as many have done, predominantly in Kigali and Huye. Nevertheless, there are challenges to self-settling outside of Rwanda’s six refugee camps, as refugees registered there have to secure written permission from MIDIMAR in order to travel. As is the case for refugees in all countries of this study, they cannot leave the country without a 1951 Convention travel document issued jointly by the UNHCR and the government.

There is officially no assistance available to urban-based refugees, which is a particular challenge in Kigali where the cost of living is high and opportunities for employment are limited. All refugees are free to secure employment provided they have obtained a refugee identity card. This has historically been an extended process; however, the government is currently in the process of collecting biometric information.
for all refugees and is said to have committed to issuing identity cards by July 2018. Nevertheless, even among qualified candidates, lack of awareness among hiring firms poses significant and widespread barriers to employment: employers express hesitation to hire refugees out of ignorance of the law, even when they see refugee ID cards, which are nearly identical to national ID cards, and also due to concerns that individuals could be resettled or repatriated at any time. It also does not help that the majority of refugees are themselves ignorant about their rights within the country. This ignorance is reported to be compounded by limited and mixed messages from governmental and INGO authorities.

The arrangement that allows refugees the right to work was brokered between the UNHCR and MIDIMAR more than two years ago, and entails many of the same processes that apply for (labour) migrants from the EAC vis-à-vis the CMP of 2010. Migrants have the right to enter the country without paying for a visa and do not have to pay for work permits. So long as migrants have the right registration documents, they can be employed, though many employers are unaware of the rules. It is said, also, that the employer has to prove the inability to find a suitable national candidate and present records of having attempted all recruitment channels. If non-nationals do secure the jobs, whether they are refugees or otherwise, they have the same contracts, rights and benefits as Rwandese workers.

Self-employment for non-nationals is reportedly a less opaque and challenging process, whether for EAC nationals or otherwise. Yet, many efforts by foreigners to start businesses were accompanied by incidences of abuse of the system. The Rwandan Development Board (RDB) has applied two regulations and requirements: i) proof that business owners pay rent for office space, to ensure that they are not just working out of their homes or coffee shops; and ii) that businesses have at least one contract signed in the first six months of operating, to mitigate against instances of individuals getting permits from the RDB without actually operating. For migrants who are genuinely interested and have the resources, these stipulations are reportedly not a problem. A Burundian refugee based in Kigali relayed that he and his Rwandese business partner were able to obtain a business certificate in just one day through the RDB.

Currently, the most visible and concrete opportunities for non-nationals in Rwanda are available to high-skilled, regular international migrants, who benefit from having a centralised set of online instructions for entering the country and participating in the labour market. Meanwhile, a number of migrant populations remain vulnerable due to practical protection gaps on the ground. One informant expressed that he is ‘hopeful that things will improve’ even though the government ‘has enough issues with its own population in this small, densely concentrated country’.

27 Interview, Jean Marie Vianney Hitamungu, Careers Director, Kepler, Kigali, 9 May 2018.
29 Interview, Siddiqui Abdurahim, Deputy Director, World Food Programme, Rwanda, 10 May 2018.
Kenya: Restrictive environment

Kenya’s labour markets attract more migrants from EAC member states, other African states and other parts of the world than do the other countries of the study. This is largely due to the country’s strategic position in the EAC, its vibrant economy and its hosting of INGO headquarters, regional NGOs, corporate companies and technological start-ups. Despite these strategic advantages, roadblocks have limited the absorption of foreign workers into its labour market, particularly among lower-skilled, less well-resourced individuals. These roadblocks include the need for documentation and proof by recruiting firms that vacant positions cannot be filled by local labour; high work permit fees that either fall to the recruiting company’s budget or on the migrant’s shoulders; bureaucracy and long waiting periods in getting decisions; and high rejection rates.

Voluntary migrants are affected by the increasing bureaucratic hurdles created by the Kenyan government, as well as the heightened securitisation discourse. This is evident in the strict documentary evidence needed for work permits and special pass applications. The changes are said to be due to additional safety concerns in the country and are relevant for people already living and working in Kenya as well as people considering moving there for work. In both Kenya and Tanzania, the same applies for labour migrants transiting through the countries: they are often harassed, detained and/or deported to their countries of origin.

Kenya is characterised by a strict encampment policy stipulating that all refugees should reside in designated camp areas with few urban exceptions. In Kenya, the renewed focus on encampment since 2012 has been reinforced by the Security Laws (Amendment) Act of December 2014, which amends the Refugees Act of 2006 and the Kenya Citizenship and Immigration Act. Contrary to the 1951 UN Convention and the Constitution of Kenya (2010), the encampment policy does not allow refugees to freely move out of gazetted areas without a movement pass, currently issued by the government’s Refugee Affairs Secretariat (RAS). This practice has generated irregular movement as refugees and asylum-seekers continue to travel between Dadaab and Kakuma camps into urban areas, most notably to Nairobi, risking and experiencing detention in Garissa and Mwingi while on transit.

The protracted handover of asylum and refugee status determination (RSD) by the UNHCR to the government of Kenya has led to institutional changes seen in the creation of RAS and the disbandment of the Department of Refugee Affairs (DRA) in 2016. These institutional and legal changes are impacting refugees and asylum-seekers with the creation of a significant backlog of cases. Asylum-seekers interviewed in Nairobi for this study have had to wait for more than a year for their status to be

determined. This has a direct impact on their protection, considering that asylum-seekers cannot access health, education and labour in Kenya without a refugee alien identification card.

Tanzania: Increasing hostility in migration management
Tanzania has historically been considered a welcoming country when it comes to hosting refugee and voluntary migrant populations. However, changes in governance in recent years have shifted toward xenophobic and protectionist narratives. Prior to the breakout of civil war in Burundi in 2014, Tanzania had a rapidly shrinking refugee population – comprised almost entirely of Congolese living in a single camp far removed from urban settings – that it had worked to reduce through resettlement and mass naturalisation efforts. The influx of Burundians over the past four years has led to a multiplication of camps and displaced populations – currently estimated to be 315,000 – that have been matched by increasingly restrictive norms set by the current president. Refugees reside primarily in camps, showcasing the importance, still, of encampment policies in the region. While a 2014 Act provides for free work permits for refugees, there are significant blockades to their attempts at self-reliance, notably due to mobility restrictions. Their access to education, health and citizenship is either restricted or forbidden. Refugees, especially those living in urban areas, live in fear of getting arrested, detained, reported or returned, and are largely unaware of their protection rights.

Restrictive policies limiting refugee movement and access to labour markets are commonly expected and accepted in the African context, and so Tanzania’s increasingly controlling regime does not attract much attention. However, the government’s decision to withdraw from the CRRF in February 2018 took many international actors by surprise, as Tanzania was hoped to be another influential pilot country in the region. More critical analysts rationalised CRRF as another global initiative attempting to disguise an old process under a new cloak. The idea behind responsibility and burden sharing remains aspirational and distant, given the closed Tanzanian border and quasi-refoulement practices. ‘The final remnant of the myth of burden sharing is busted,’ according to one key informant. ‘Governments have had enough of the power dynamic’ that rules discussions and implementation of durable solutions programming.32

32 Interview, Lucy Hovil, Senior Research Associate, Refugee Law Initiative, Uganda, March 2018.
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Samuel Hall. 2018. Understanding Intra-Regional Labour Migration in the EAC. Ongoing research funded by the East Africa Research Fund (EARF).


Executive summary

In Kenya, a number of migration policies have been in draft form for several years. These include the Kenya Draft National Migration Policy (2009) (IOM, 2015) and the Kenya Draft National Labour Migration. Others – such as the 2017 Refugee Bill – have been rejected and are being redrafted for approval. While on one level progress on migration governance is slow, this case study highlights opportunities for change. Migration frameworks are available and commitments made to ensure safe and free movement, notably at the regional level; they need to be implemented and followed at national and local levels. Kenya is a member of the East Africa Community (EAC) and of the Inter-Governmental Authority on Development (IGAD), and hosted in 2017 the Nairobi Declaration on Somali Refugees that sealed a regional commitment to durable solutions. Kenya is also following the global migration processes, and joining the Comprehensive Refugee Response Framework (CRFF). At the national level, Kenya has gained authority over refugee status determination, and now has to ensure that refugees are protected by a Refugee Bill that mirrors global and regional commitments. The same national alignment needs to happen on labour migration, with the support of the devolved government. Local authorities’ role on migration can be strengthened to maximise the benefits of migration and enhance protection for all. This paper discusses opportunities for migrant protection by identifying three priority areas:

- Promoting and protecting labour migration: While civil society organisations (CSOs) in Kenya are active and vocal on the forced migration landscape, notably through actions taken by legal aid organisations, fewer are advocating for better conditions for labour migrants. A national dialogue around safe and free movement, and the rights of EAC workers specifically, is missing, limiting the protections that they can access. One exception is the Pan African Citizens Network (PACIN), a regional CSO based in Kenya that has been advocating for labour migrants from Africa. Among its
many recommendations is Kenya’s need to relax labour market and visa regulations for Africans to better facilitate free movement, limit irregular migration and human smuggling in the region and ultimately enhance the protection of migrants (PACIN, 2018a). The progress has however been slow with setbacks emanating from a national discourse that has put forward the securitization of migration and citizen centric labour policies, and obstructed by other practices, such as corruption in government offices. Strict work restrictions, both limitations on sectors and access to work permits have not reduced labour migration to Kenya, but have increased irregular migration. This trend has to be reversed through a constructive dialogue on migration, work and the economy. Although work permits for citizens from the EAC were abolished with the launch of the EAC Common Market Protocol (CMP) in 2010, national legislation has not adjusted to this change. Kenya has only waived work permit fees for Rwandans. The need for harmonization and progressive change at a national level can also be extended at a local level to engage in social dialogue between foreign workers and employers, between CSOs and labour migrants, between local authorities, politicians and migrant representatives.

- **Ensuring refugee protection standards are maintained, at a time of handover and change**: the protracted handover of asylum and refugee status determination by UNHCR to the Government of Kenya has led to the creation of the Refugee Affairs Secretariat (RAS) and the government’s disbandment of the Department of Refugee Affairs (DRA) in 2016. These institutional and legal changes are impacting refugees and asylum seekers with a significant backlog of cases. Asylum seekers interviewed for this study in Nairobi have had to wait for more than one year before for their status could be determined. This has a direct impact on their protection given that asylum seekers cannot access health, education and labour in Kenya without a refugee alien identification card (Norwegian Refugee Council, 2017a).

- **Elucidating the link between devolution and migration**: Devolution is an entry point into migration governance (ReDDS and Samuel Hall, 2015). Previous research had identified opportunities to increase county budgets through formal taxation of migrants, shared access to services and of infrastructure for services such as health care and education. Moving beyond refugees, the linkages and mutual benefits of devolution and labour migration need to be discussed.
An economic analysis of the financial benefits of incorporating refugees and other migrants in the County Integrated Development Plan (ICDP) is a step towards shifting mind-sets and building policies at a county level.

This research provides recommendations for making such changes happen. It also deals with more obvious issues on the need to raise awareness and knowledge on the rights of labour migrants and refugees, and the need to operationalize existing legal frameworks.

**Introduction**

This case study is based on research conducted in early 2018 as part of a multi-country research commissioned by Open Society Foundations (OSF), through Wits University’s Africa Centre for Migration & Society (ACMS), on *safe and free movement in Africa*. The research aims to identify and analyse the gaps and obstacles in migration laws, policies and practice in Kenya, with the goal of identifying opportunities for legislative and policy reform. More specifically, it sets out to:

- Identify the practices that impede or enable migrants from reaching protection;
- Identify the potential obstacles or drivers to progressive change;
- Compare the experiences of migrants with those of the host community.

A legal review was conducted to support this research, and completed by on-the-ground interviews to assess the extent to which the legal frameworks and policies that govern migration in Kenya are applied to advance or limit the protection of migrants. By reviewing the practice of everyday migration governance, the administrative and implementation capacity of government officials at a local level, and recording migrant and local voices, this report presents obstacles and drivers to progressive change. This case study gathers fresh insights from policy makers, practitioners, civil society organisations, migrants and non-migrants alike, on migration in Kenya. The goal is not to provide data on migrants or a policy review, but to enhance an understanding of the current climate and possibilities.

**Methodology**

The methodology was purely qualitative, with key informant interviews and FGDs. A Kenya-based research team collected data in January 2018 in two main locations, namely Nairobi (urban setting) and Garissa (border setting). Twenty-seven key informant interviews were conducted, 13 in Nairobi and 14 in Garissa Township and UNHCR offices in Dadaab (Table 1).
Table 1: Key informant interviews conducted in Nairobi and Garissa, Kenya

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Table 2: Focus group participant discussions by location and country of origin

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<td>Somalia</td>
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<td>Ethiopia</td>
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<td>South Sudan</td>
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<td>Uganda</td>
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<td>Tanzania</td>
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<td>Burundi</td>
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<td>Democratic Republic of Congo</td>
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<td><strong>Total number of participants</strong></td>
<td><strong>22</strong></td>
<td><strong>15</strong></td>
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Efforts were made to go beyond refugee or migration affairs counterparts to include technical ministries and local authorities working on access to services, to investigate potential entry points for inclusion of migrants in broader service delivery. Relevant academic, national and international organisations knowledgeable on local migration dynamics and on free and safe movement were included. Finally, CSOs working on migration-related issues, and pro-poor organisations and associations were a key counterpart interviewed in the research. FGDs were held separately with migrant and local populations to determine the degree to which migrants face specific vulnerabilities, and to identify specific interests in the local community that can work in favour of or against migrants. Five FGDs were conducted in Nairobi and Garissa during the research, with 37 migrants participating in the discussions. Two FGDs were held with local community representatives and three with migrants. Of the three, one was solely
a female migrant focus group. The FGDs were conducted in English and Kiswahili without any translation. Sudanese and Somali translators were incorporated in two FGDs. The interview guides were structured around potential threats to and support systems for migrants (including refugees and asylum-seekers).

**Overview of the research sites**

Nairobi is Kenya’s capital and hosts around 64,000 refugees (Norwegian Refugee Council, 2017a). It also attracts economic migrants from across the world given its vibrant labour markets and informal economy sectors (IOM, 2015). The city is further a transit point for migrants aiming to reach third countries through regular (resettlement, visa application) and irregular (smuggling) means (IOM, 2015).

Garissa town is the largest town in Garissa County. The county is located in northeastern Kenya on the Somali border. The town is a major migration corridor and counts a range of migration groups, including asylum-seekers, refugees and economic migrants from Somalia, Ethiopia and Yemen, settled or headed to Nairobi or other third countries. Not far from Garissa town is the Dadaab refugee camp complex, one of the largest refugee camps in Africa (Norwegian Refugee Council, 2017b).

**Limitations**

Due to the limited time for fieldwork, the research does not capture the extent to which the private sector is contributing to the protection of migrants in Kenya and the capacity that could be harnessed to this effect. Nor does it elaborate in depth on labour unions and professional organisations. The focus remains mostly on the policy implications of migration management in Kenya.

**Obstacles and opportunities for migrant protection**

Kenya has developed a number of legal frameworks that govern migration (IOM, 2015). The Constitution of Kenya, specifically Article 39 on the Freedom of Movement and Residence, provides for persons to move freely and reside anywhere they desire in Kenya. The policy landscape is a dynamic one and has seen significant changes in recent years. In 2016, the NGO Coordination Board restricted work permit issuance, alongside directives to close Dadaab refugee camps. In 2017, the president of Kenya declined to sign the Refugees Bill, sending it back to parliament.

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33 Interview, Refugee Consortium of Kenya (RCK), Garissa, 19 January 2018.
35 A State Corporation responsible for registering, facilitating and coordinating all national and international NGOs operating in Kenya; advising the government on their contribution to national development; providing policy guidelines for NGOs to align their activities with national priorities and receiving and analysing NGOs annual reports.
Non-governmental efforts continue to actively lobby for the signing of the Refugee Bill (2016). Such tensions between obstacles and opportunities for legal migrant protection are ongoing in Kenya, alongside continued restrictions limiting migrants’ free movement in the country. 2017 offered promising steps forward: Kenya hosted the IGAD Nairobi Declaration on Somali Refugees, and the president further declared that visas would be offered to Africans on arrival and work permits issued to EAC migrants at no cost. However, 2017’s positive developments have yet to translate into improved migrant protection. Instead, the government’s de facto encampment policy, buttressed by the Security Laws Amendment Act (2014) and the review of labour policies in 2016 (PACIN, 2018a) to give Kenyans labour market priority over foreigners, are pushing migrants towards irregular migration practices (Amnesty International, 2017).

Practices undermining migrant protection

Encampment

At the international level, Kenya has signed and ratified the 1951 UN Convention Relating to the Status of Refugees and its 1967 protocol. Kenya is also a state party to the 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee problems in Africa (African Commission on Human and Peoples’ Rights, n.d.). Addressed in the frameworks are the legal obligations of states parties with regards to the protection of refugees and asylum-seekers. The 1951 UN Convention has been domesticated in Kenya’s Refugee Act of 2006, outlining the rights and obligations of registered asylum-seekers and refugees in Kenya. Although the UNHCR has passed responsibility for RSD to the Kenyan government, the RAS – established as part of this transition – still relies on the UNHCR and its partners to support RSD, registration and provision of basic needs and social amenities to refugees and asylum-seekers. Limitations to local integration and a funding cut for organisations specialising in resettlement support have, since the start of the Donald Trump administration, posed a threat to the protection of migrants and to the provision of durable solutions offered to refugees.

Kenya’s encampment policy stipulates that all refugees should reside in designated camp areas. The renewed focus on encampment since 2012 is reinforced by the Security Laws (Amendment) Act No. 19 of December 2014, which amends the Refugees Act (2006) and the Kenya Citizenship and Immigration Act. Contrary to the UNHCR’s 1951 Refugee Convention and the Constitution of Kenya (2010), the encampment policy

37 Interview, PACIN, 27 February 2018.
does not allow refugees to move freely beyond designated areas without a movement pass, currently issued by the government’s RAS. This practice has generated irregular movement as refugees and asylum-seekers continue to travel between Dadaab and Nairobi, risking detention in Garissa and Mwingi while in transit.

There were teenagers who started moving to Garissa and Nairobi to look for job opportunities because they didn’t feel like they could go back to Somalia. Last year, 35 people were arrested in Mwingi on transit to Nairobi [...] the government declined to receive those people back to the camps, thus they were deported back to Somalia.  

Law enforcement officers have reportedly arrested and *refouled* asylum-seekers in transit, trying to reach protection. The practice is more prevalent in Kenya’s northern migration corridor bordering the Somalian and Ethiopian border in comparison to the western migration corridor (Uganda, Tanzania), highlighting the ethnic profiling of certain migrant groups. Political extraditions, contrary to the principle of non-*refoulement*, were reported during the study. This was prevalent among high-profile political asylum-seekers and journalists from South Sudan, Ethiopia, Burundi and Rwanda. Notable among these was the case of South Sudanese opposition leader Marko Lochapio, who was reportedly abducted from Kakuma Refugee Camp and transferred to South Sudan authorities in December 2017.  

There are instances of high-profile government officials from South Sudan seeking asylum being abducted and taken back to South Sudan. Rwandese are also being deported back and there are reports about Ethiopians being taken back to Ethiopia.

Various local CSOs have advocated for non-*refoulement* and for the non-deportation of migrants whose cases were still being heard in the High Court. One informant working for a CSO cited fearing for her job and being victimised by her organisation if she shared the details of *refoulement* cases; she received instructions to tone down on government criticism for fear of being deregistered. The sensitivity around non-*refoulement* and the power imbalance between the government and locally registered CSOs highlights a space for change.

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38 Interview, Child Protection Officer, Dadaab, 18 January 2018.
39 Interview, Kituo Cha Sheria (Centre For Legal Empowerment), Nairobi, 8 January 2018.
41 Interview, Refugee Officer, Nairobi, 10 January 2018.
Limited alignment with EAC commitments

Implementation of policies that protect migrants is also a problem on the labour migration front. Kenya has been lax in factoring voluntary migrants into its internal development policies and frameworks, even after signing the EAC’s CMP (2010).\(^{42}\) The framework provides for the free movement of goods, labour, capital and services among EAC member states, namely Kenya, Tanzania, Uganda, Rwanda and Burundi.\(^ {43}\) Kenya is also a member of COMESA but has not ratified or implemented the provisions of its Free Movement Protocol (PACIN, 2018b). As of 11 June 2016, only four out of 19 member states had signed the COMESA protocol (Burundi, Kenya, Rwanda and Zimbabwe, with only Burundi having ratified it) (PACIN, 2018b). The main objective of both protocols was to accelerate the economic growth and development of partner states through the right of establishment of residence and the free movement of services and capital (PACIN, 2018b).

Kenya has no internal legislative framework that factors the development impact of migrants in the country. Two policies that would address this are still in draft form. These are the Kenya Draft National Migration Policy of 2009 (IOM, 2015), the current status and content of which is unknown, and the Kenya Draft National Labour Migration, which aims to ‘manage labour migration for the benefit of migrants and their families, and to provide up to date Labour Market Information on development of human resource policies and strategies’ (IOM, 2015). The impact of having these policies only in draft form was evidenced by the research findings of Tanzanian labour migrants in Nairobi having to travel to the border every three months to renew their passports, and the police harassment of EAC economic migrants in Garissa.\(^ {44}\) Kenya, like Uganda and Rwanda, has waived work permit fees for EAC citizens but there is lack of awareness of this on the part of citizens and government officials at both the national and local levels.

For Kenya unfortunately, information has not percolated down to the people who need to implement these policies; you still find non-tariff barriers even to movement. There is lack of awareness partly on government and the citizens themselves.\(^ {45}\)

The gap in government officials’ awareness levels of the EAC protocol is illustrated by the quote below by a senior migration officer, who is unaware of the work permit fee waiver – which remains, across all interviews conducted for this research, an area of inquiry and disagreement. The lack of information among officials calls for greater focus on sensitising top-level government actors on restrictions at the field.
level. Stakeholders highlighted the gap in efforts to sensitisie public officials on the legislative frameworks governing migration in Kenya. The EAC’s CMP, though signed and ratified by Kenya to allow free movement of EAC citizens, is largely a grey area in practice. Migrants from the EAC, Kenyan citizens and government officials at the national and county levels were found not to be adequately sensitised on the protocol. Kenyan citizens and organisations were found to be discriminating against EAC migrants when it came to labour provision and remuneration – unaware of the work permit fees waiver espoused by the EAC protocol.

There is access to labour but it is hampered [...] for example, when a person wants to acquire a work permit they need 10 million KES [...] Where will a Ugandan get 10 million? [...] when you want a work permit you should have to have 10 M in your account [...] so when you apply, chances of rejection are high.46

One of the reasons for the lack of clarity is due to the multiple strands of government involved in migration issues. The state agencies mandated with migration governance and their functional departments include the following:

- Ministry of Interior and Coordination of National Government – RAS, Department of Immigration Services, the National Registration Bureau, the Civil Registration Department and the Integration Population Registration System;
- Ministry of Foreign Affairs and International Trade;
- Ministry of Devolution and Planning – Kenyan National Bureau of Statistics, the National Council for Population and Development, the National Youth Service, the Youth Enterprise Development Fund and the Youth Employment Scheme Abroad; and
- Ministry of EAC, Labour, Social Security and Services – Department of EAC, Department of Labour, National Employment Bureau, Department of Children Services.

Interministerial exchanges are lacking. The ministry of EAC, Labour, Social Security and Services rarely interacts with the Ministry of Foreign Affairs and International Trade and the Ministry of Interior in spite of their respective mandates on migration. In the course of the research, it was common for key informants to refer to one or the other mentioned ministries for further information. When questioned about coordination mechanisms, no positive answer was forthcoming. This results in redundancy and conflicting information on the part of those seeking information on labour migration. This environment has had a

46 Interview, Senior Migration Officer, Research, Training and Policy, Department of Immigration, Nairobi, 12 January 2018.
negative impact on how officials interact with forced and voluntary migrants. Sensitisation workshops and trainings for government officials have limited impact due to high turnover rates of government officials and frequent internal transfers. The issue of training and capacity is not only limited to the realm of forced migration but extends to voluntary and labour migration. Regional workshops organised by the private sector have not yielded positive results and best practices have not percolated to government officials who interact with labour migrants on a day-to-day basis through workshops and training. More needs to be done, as seen in statements made by officials:

I have attended three workshops now but all have not yielded much results because I forward the recommendations to the cabinet secretary, that my office needs money to sensitise and train employees but nothing much is done really. I am sitting on this vast amount of knowledge that is not being put to use because it is not I who interacts with labour migrants on a day-to-day basis.\(^47\)

**Knowledge fragmentation**

The lack of awareness was found to lead to confusion and frustration on the part of employers based in Kenya wishing to recruit talent from Africa and beyond, confirmed by stakeholders participating in a workshop on durable solutions in Nairobi in April 2018. It is common to move from one government agency or ministry to another looking for information on a single migration issue, with conflicting information from government officers. This is prevalent when it comes to labour migration, with the information gap extending to relevant government websites:

There is no information at all on labour migration, not even basic information. Recently we recruited an intern from Ethiopia but it was such a frustrating experience. There is no updated information on the Department of Labour and Department of Immigration’s websites and you cannot just walk into an office and get this information. It took my colleague walking up and down different offices the whole day to get very basic information.\(^48\)

Many officials use the lack of information as an excuse or do not make an effort to inform themselves on the laws and frameworks that exist. There are shortcomings to the data, but there is an equal lack of incentive to collect and use data, and to implement frameworks. Corruption is widespread when it comes to obtaining work permits and legal status in Kenya given the required facilitation by middlemen and intermediaries. An example is the online system for work permit applications – even

\(^47\) Phone interview, Chief Communication Officer, Government Ministry, Nairobi, 26 February 2018.

\(^48\) Interview, PACIN, 27 February 2018.
when a work permit is approved, having it stamped for official validation in one’s passport is not feasible without pressures from an intermediary.

As a result of the lack of information, cumbersome administrative processes and overall uncertainty of making it through the bureaucratic hurdles with a successful outcome, migrants are entering and working in Kenya illegally, thereby limiting the impact of labour migration on development. Recent issues with corruption and the mismanagement of work permits in Kenya have led to a national call to validate and renew all work permits through the immigration office within 60 days.

Migrants from African countries – though mostly embedded in formal employment structures and entrepreneurship activities – report facing obstacles with regards to obtaining work permits in Kenya. They commonly assume it is impossible to obtain a work permit. This assumption is most prevalent among labour migrants from the neighbouring countries of Uganda and Tanzania who often cross the rather porous Kenyan borders.

Our Kisumu and Mombasa branches deal a lot with domestic and hotel workers from Uganda and Tanzania respectively. These migrants are often not registered in any Kenyan database and it is only when they are mistreated and denied their salaries that they show up in our offices. Most are not even aware of the issue of work permits and that they need one. The few that do say it is expensive. This limits the extent to which we can help them as a union.

Much of the government’s focus has been on out-migration, not in-migration. The National Employment Agency under the Ministry of Labour has concentrated more on the registration and monitoring of employment agencies that facilitate emigration – mostly to United Arab Emirates, Saudi Arabia and Qatar. An effect of this focus has been a lack of attention to local benefits of migration and the potential for south–south migration to contribute to Kenya’s development at a national level. As a result, county governments – specifically those hosting large numbers of refugees in marginalised areas of the country – have adopted a range of approaches to integrate forced migrants into their development plans despite the lack of guidance. Among these, the Garissa ICDP (2018–2022) recognises the development potential of including Dadaab’s refugees and asylum-seekers in Garissa’s socio-economic planning:

We are very serious about seeking a sustainable, durable solution for the refugee population in Dadaab. The general perception in Garissa is cordial and the governor believes in finding a long-term solution [...] There is a

49 Ibid.
50 Interview, Secretary General, KUDHEIHA, Nairobi, 28 February 2018.
freedom and safe movement in East Africa

general lethargy in funding protracted refugee situations in the world so we ourselves have to find a new way as a county. We are benchmarking in Turkana and we have included refugees in our draft 2018 ICDP which is currently with the executive [...] it will then be presented to County Assembly. The potential remains curtailed in practice due to the impact of a national-level securitisation discourse. As a result, providers of health, education and housing were reluctant to offer services to refugees and asylum-seekers in Garissa, citing the Security Laws Amendment Act (2014). Garissa County government officials lacked awareness of the legislative frameworks that govern migration in Kenya. This was manifested through the harassment, detainment and *refoulement* of asylum-seekers/refugees and voluntary migrants in transit from their countries of emigration. Lack of awareness was manifested more in Garissa compared to government officers interviewed in Nairobi. Finally, Garissa County did not have the capacity to formulate migration policies or implement the policies set up by the national government. The lack of mandate, as migration management is a function of the national government, and lack of capacity were cited as some of the reasons why Garissa County, at the time of the research, was not managing migration matters at the county level or offering protection to refugees and asylum-seekers.

The problems are not only technical but also structural: although the devolved government is in place, there is a need to overcome the disconnect between national and county plans. Decisions are still made at the national level but policy changes are not built at the county level; while at the county level sporadic changes can happen, structural changes do not. Building on the ambitions of devolution, migration decisions should be considered to be devolved when they are still seen as national immigration and national security issues.

Practices enhancing migrant protection

An existing institutional system

Refugee populations are better served by institutional stakeholders than are labour migrants. Mobilisation in support of migrants has centred on refugee protection: various government departments, NGOs, CSOs and INGOs are mandated to support refugees. Their legal rights are being addressed through partnerships between international organisations and civil society. As an example, the UNHCR works closely with the RAS, RCK and Kituo Cha Sheria to conduct annual legal clinics in Nairobi,

51 Phone interview, Chief Officer, Trade and Enterprise Development, Garissa County, 26 February 2018.
52 The law prohibits Kenyan citizens and local organisations from engaging undocumented migrants or refugees and asylum-seekers outside the confines of designated camps.
53 Interview, Member of County Assembly, Garissa town 15 January 2018.
targeting different migrant-hosting residential areas in Nairobi. In 2017, Eastleigh, Kayole, Umoja, Kitengela, Ruiru and Kawangware were targeted at different times of the year.\(^{54}\) The purpose of the legal clinics is to sensitise asylum-seekers and refugees on the processes they have to undergo to be registered in Nairobi, as well as their rights and duties while living in Kenya.\(^{55}\) Protection was not limited to information dissemination but extended to the pro bono legal representation of migrants detained by the police and arraigned in Kenyan courts. RCK limited their representation to forced migrants in Garissa and Nairobi. However, Kituo Cha Sheria represented both voluntary and forced migrants detained in various border and transit towns in Kenya, notably Mombasa, Kisumu and Eldoret.\(^{56}\)

The UNHCR, in collaboration with RCK and Kituo Cha Sheria, also facilitated sensitisation workshops targeting law enforcement officers (police, magistrates, judges), students, government immigration officers and community leaders in Nairobi and Mombasa. These workshops aimed to increase awareness on the legislative frameworks that govern migration in Kenya. In 2017, five sensitisation workshops were customised and conducted to meet the information needs of the aforementioned stakeholders.\(^{57}\)

Various aspects of refugee protection continued to be covered independently by NGOs, ensuring an institutional structure to respond to their needs. This is done in multiple sectors:

- **Health:** National and county government health facilities have been offering services to refugees with alien identity cards through the National Hospital Insurance Fund (NHIF). Migrants working in the formal labour market have access to the NHIF courtesy of their employers remitting part of their salaries to the fund. The NHIF does not, however, cover asylum-seekers or voluntary migrants from the EAC and other parts of the world who are unemployed. Nonetheless, they can be attended to in government hospitals at their own cost.

- **Housing and shelter:** NGOs like Heshima Kenya, Refugee Point and Awareness Against Human Trafficking offer housing in shelters for vulnerable persons or give rent money to asylum-seekers for the first three months after they arrive in the country, with a notable focus on victims of trafficking and vulnerable migrant populations.\(^{58}\)

- **Education:** INGOs like the Xavier Project, Windle Trust International, JRS and the private sector (including Safaricom

\(^{54}\) Interview, UNHCR, Nairobi, 10 January 2018.

\(^{55}\) Interview, Kituo Cha Sheria, Nairobi, 8 January 2018.

\(^{56}\) Ibid.

\(^{57}\) Interview, UNHCR, Nairobi, 10 January 2018.

\(^{58}\) FGD, Kaberia Settlement, Nairobi, 10 January 2018.
Limited and Equity Bank) sponsor refugee children as they go through school and further offer extracurricular vocational skills and English courses to migrants in Nairobi and Dadaab refugee camps. Kenya offers free primary education to both forced and voluntary migrants. The main challenge refugees and asylum-seekers face is the lack of funds to pursue secondary and university education. The government does not subsidise university fees for international students as it does for Kenyan citizens.\textsuperscript{59} CSOs, notably LAFRIKANA in Nairobi, train refugees and asylum-seekers in English, tailoring and handcraft skills. Corporate companies, notably Safaricom Ltd (Safaricom Academy) and Equity Bank (Wings to Fly scholarship), have in the recent past sponsored both urban and encamped refugees through secondary and university education.\textsuperscript{60} These partnerships can be further enhanced and supported to encourage refugee self-reliance and development of longer-term solutions. Having highly ranked higher education institutions in Africa, Kenya attracts international students from the EAC and beyond (IOM, 2015) who self-sponsor. Kenyan universities are receptive to such, with the only barrier being the extended period required to secure a student pass (four months or more) from the Department of Immigration and later an alien card if the intention to stay exceeds three months (PACIN, 2018b).

- **Business/Project funding**: The INGO DRC, Refugee Point, HIAS Refugee Trust of Kenya and International Rescue Committee fund business projects run by refugees and asylum-seekers in Nairobi.

- **Information and social networks**: CSOs, specifically UMMA and LAFRIKANA, in collaboration with community leaders, aim to bring together migrant populations. Their efforts develop social networks that enable asylum-seekers, refugees and voluntary migrants to find employment in the informal sectors, as well as access information, food and shelter.

- **Labour market protection**: The labour union KUDHEIHA was founded to advocate for improved working conditions for domestic and hotel migrant workers. Their main office in Nairobi serves both local and migrant workers in the capital, with offices in Mombasa and Kisumu that serve migrants from EAC. KUDHEIHA’s services are limited to the small number of migrants who are unionised.

\textsuperscript{59} Interview, UMMA community-based organisation, Eastleigh, Nairobi, 9 January 2018.

\textsuperscript{60} http://www.unhcr.org/ke/13128-refugees-students-start-secondary-school-top-kenya-telecoms-companys-prestigious-academy.html
• On legal matters, the High Court of Kenya was also found to have offered critical support to refugees and asylum-seekers in Kenya specifically with regards to upholding their free movement within the country. This was highlighted in 2013\(^{61}\) and 2014\(^{62}\) when the High Court, citing the 2010 Constitution of Kenya, overruled the government’s directive to send all urban refugees and asylum-seekers in Nairobi to the camps.

**Whose responsibility is it to care for migrants?**

On the question of refugee protection, the answer to whose responsibility it is remains unclear in practice. Key informants from various government bodies pointed at the UNHCR, describing refugees as an ‘international responsibility’. The UNHCR, on the other hand, cited Kenya’s obligations stemming from the 1951 Refugee Convention, which states that the UNHCR is only supposed to take on a supervisory role. This was reiterated by several key informants:

In terms of refugee protection and hosting, Kenya has not played its full role to accommodate, accept and register refugees [...] Dadaab was created by the government who left it to UNHCR to manage. UNHCR didn’t have authority to do certain things. It has even became a security threat because it is infiltrated with bad elements due to government neglect.\(^{63}\)

This is contrary to what a government officer in Dadaab suggested:

The refugee problem is under the UN mandate as it is an international problem. The issue is not Kenyan. The government provides security and maintains law and order in the refugee camps already. The government cannot contain the 500 000 refugees, especially when it provides registration and things like food for them. This has to be done by the UNHCR.\(^{64}\)

The government’s disbandment of the DRA in 2016 and its replacement by the RAS has created a backlog of cases. Asylum-seekers in Nairobi have had to wait for more than a year before their status is determined. This has a direct impact on their

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61 Kituo Cha Sheria & 8 Others v. Attorney General, para. 94.  
63 Interviews, Academics, Moi University, Nairobi, 11 January 2018.  
64 Interview, Sub-County Children’s Officer, Dadaab, 17 January 2018.
protection given that asylum-seekers cannot access health, education and labour in Kenya without a refugee alien identification card (Norwegian Refugee Council, 2017a).

**Continuous CSO support and increased influence**

This legal vacuum has been met by continued CSO efforts to support both authorities and migrants. CSOs, specifically the RCK and Kituo Cha Sheria, are playing a continued role in ensuring that refugees and asylum-seekers are made aware of the registration processes in Kenya, and their rights and responsibilities while in the country. Despite having a presence in border towns, Kituo Cha Sheria and RCK have limited human capacity, with demand for the legal clinic outdoing supply. This was attributed to limited funding from the UNHCR and general donor fatigue:

> I don’t think there is ever a time we can ever say we had enough funding [...] there’s always a need for more awareness, more intervention and more human resources. We just have a staff capacity at RCK of 20 members against the 240,000 refugees.\(^{65}\)

RCK and Kituo Cha Sheria further sensitised local authorities on legislative frameworks through workshops. These efforts, in as much as they have created awareness, have not stopped the arbitrary arrest of asylum-seekers and economic migrants. They have, however, made it possible for migrants to access legal representation:

> The police do carry out patrols and if they encounter people without proper documentation they arrest them then call us to intervene for them.\(^{66}\)

> Most of the time, police officers arrest asylum-seekers before they get to their registration centres. On normal occasions migrants are charged with unlawful presence in the country. We have sensitised the security agencies about refugee law, and we’ve also left our contacts in most police stations across the country, particularly for those that are in border regions.\(^{67}\)

Law enforcement officers interviewed in this research could not differentiate between migration categories, the asylum process and identification documents required by law. It was suggested that refugee law should be included in the police curriculum given the frequent transfer of officers who had undergone training from CSOs and INGOs.

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65 Interview, Legal Officer, Garissa, 19 January 2018.
66 Ibid.
67 Interview, Legal Officer, Nairobi, 8 January 2018
In contrast, the Officer Commanding Police Division interviewed in Garissa affirmed that the police had enough knowledge of legal frameworks governing migration:

UNHCR invites us for seminars every three months [...] We also are taught refugee law and immigration law in police training [...] We have multi-agency meetings every week to discuss cases of aliens before they are deported. These agencies include the Immigration Department, the Directorate of Criminal Investigations, Kenya Police, National Intelligence Service and National Reference Bureau [...] So you see we are informed.68

While CSOs are present on the forced migration landscape, fewer were exclusively advocating for better conditions for labour migrants in Kenya. Reasons attributed to the lack of local CSOs on voluntary migration were linked to the lack of international donor prioritisation of this topic and the stringent rules for opening CSOs in Kenya,69 with stringent control by the government on the registration and deregistration of NGOs and CSOs.

One exception is PACIN, a regional CSO based in Kenya that has been advocating and writing policy briefs on labour migrants from Africa. Among its many recommendations is Kenya's need to relax labour market and visa regulations for Africans to better facilitate free movement, limit irregular migration and human smuggling in the region and ultimately enhance the protection of migrants (PACIN, 2018a). The progress has, however, been slow, with setbacks emanating from the securitisation of migration, citizen-centric labour policies and corruption in government offices.

Kenya's labour market attracts migrants from the EAC, Africa and other parts of the world, respectively. This is because of the country’s strategic position in the EAC, its vibrant economy and its hosting of a lot of INGO headquarters, regional NGOs, CSOs, corporate companies and technological start-ups.70 Despite this strategic advantage, there have been roadblocks that limit the absorption of foreign workers into its labour market. These include the need for proof by the recruiting firm that the vacant position cannot be filled by local labour, high work permit fees that either fall to the recruiting company’s budget or on the migrant’s shoulders, bureaucracy and long waiting periods in getting a decision and high rejection rates.

Protecting the labour market for Kenyans makes sense in practice but the ability to demonstrate the indispensable nature of foreign labour is not so much a matter of the welfare of Kenyans but how deep one’s pocket can go.

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68 Interview, Police Division Commanding Officer, Garissa Town, 15 January 2018.
69 Interview, PACIN, 27 February 2018.
70 Ibid.
have a Kenyan friend whose is married to a foreigner and it is now his seventh year trying to get a work permit. How is this person a threat to local citizens’ labour opportunities if he is married to a citizen? We have been writing policy briefs that highlight these issues and not only addressing them to the Kenyan government but the AU.\textsuperscript{71}

Without a work permit, labour migrants in Kenya cannot open bank accounts, get tax identification numbers or register for social security and the NHIF. This relegates unregistered migrants to informal labour markets, putting them at risk of exploitation by their employers. KUDHEIHA has, however, been advocating for employers to register all workers, whether locals or migrants, for the NSSF and the NHIF.\textsuperscript{72} Migrants with work permits, however, were found to be registered, with access to bank accounts in Kenya.

The research also found a discrepancy between the treatment of high-skilled migrants and low-skilled migrants when it came to work permit provisions. The company worked for determined if a work permit would be issued or not:

> When you look at the few migrants who are unionised you will find that they are either doctors or lecturers in the university. For example, doctors at the Aga Khan University Hospital and these private hospitals get it easy. But if you have come to work as a maid, no one has time for you. This group is the most mistreated by employers as they do not even have bank accounts.\textsuperscript{73}

The following was underscored in a different interview:

> It is not like it was four years ago where UN or our organisation could just recruit anyone from abroad. The rules are more stringent now. We had to do away with staff from other African countries since the policy change in 2016. Currently we only have Kenyan employees yet we are a regional organisation. CSOs and NGOs are not willing to pay the hefty prices anymore. This is not a good sign for the free movement in Africa vision.\textsuperscript{74}

The securitisation discourse has also affected voluntary migrants, as seen in the increased documentary evidence now needed for work permits and special pass applications. The changes are due to additional safety concerns the country now faces and are relevant for people already living and working in Kenya as well as people

\textsuperscript{71} Interview, PACIN, 27 February 2018.
\textsuperscript{72} Interview, KUDHEIHA, Nairobi, 28 February 2018.
\textsuperscript{73} Ibid.
\textsuperscript{74} Interview, PACIN, 27 February 2018.
considering moving there for work.\textsuperscript{75} The same applies for labour migrants in transit, who are often harassed, detained or deported to their countries of origin:

Our work is not limited to refugees but also covers migrants who cross the Ugandan and Tanzanian borders to look for work. Mostly they are detained in transit between the borders and their destination. We have legal officers in Eldoret and Mombasa to address such issues but sometimes our capacity is limited. We often reach police stations after they have been deported.\textsuperscript{76}

Labour unions, notably KUDHEIHA, advocate for the inclusion of migrant workers in the scope of national labour legislation.\textsuperscript{77} It was found that most migrant workers have unclear terms of employment, are not included in any formal national employment register and are not registered in any labour unions. However, the union’s initiative is curtailed by the small number of migrants in Kenya who are unionised.

**Local government development approaches**

Earlier research has established the potential for devolution – and for local entry points – to protect refugee and host populations alike, by engaging more closely with county governments (ReDSS and Hall, 2015). Although legislators interviewed at the local level – specifically the members of Garissa County Assembly – were not keen on debating migration in the current environment of securitisation, entry points remain. It came out that priority for the legislators in Garissa was making devolution work first for the local population before extending it to benefit migrants.\textsuperscript{78} This is where an opportunity remains to reach ‘win-win’ outcomes for all, by integrating the refugee response into the devolution framework at the county level.

Pushbacks at the local level exist. The fieldwork revealed that local politicians were lobbying against the incorporation of refugees and asylum-seekers in the ICDP of 2018–2022.\textsuperscript{79} Reasons cited for this were environmental degradation caused by the refugees and the high number of refugee birth certificates being issued in Garissa. The perception was that a high refugee population would tip the political dynamics and voting patterns in the county. Further, favourable conditions for refugees (health, food, education) as opposed to the local population were some of the issues cited by politicians.


\textsuperscript{76} Interview, Legal Officer, Nairobi, 8 January 2018.

\textsuperscript{77} Interview, Secretary General, KUDHEIHA, Nairobi, 28 February 2018.

\textsuperscript{78} Interview, Member of County Assembly, Garissa County, 15 January 2018.

\textsuperscript{79} Ibid.
Local politicians specifically disapprove of the flourishing trade and the pervasiveness of contraband goods in Dadaab brought in by Somali refugees. These goods were being transported beyond the borders of the camp, compromising trade in Garissa County. The current government in Garissa County remains open to the socio-economic integration of migrants in Kenya. The newly elected governor of Garissa County has shown keen interest in including migrants in ICDP 2018–2022. Both humanitarian and development partners were involved in the development of the plan.\footnote{80} Elements of socio-economic integration in the ICDP include:

- The incorporation of refugees into micro finance and agricultural projects in Garissa County;
- The formalisation of a taxation regime to capture trade and the micro economies within Dadaab refugee camps; and
- The provision of social amenities like health, education and housing to both voluntary and forced migrants in Garissa.

The ICDP was at the executive level waiting to be forwarded to the County Assembly for debate and public participation. It transpired that the ICDP was reinforced by Garissa County’s Comprehensive Refugee Planning (2019).\footnote{81} To this end, county government officials had been seconded to Turkana County to benchmark on the Kalobeyei Integrated Social and Economic Development Programme.\footnote{82} The County Government of Garissa has also gone out of its way to create a Directorate for Intergovernmental and Institutional Relations to ensure that there is cooperation between the various agencies working to find durable solutions for refugees and asylum-seekers in Garissa County.\footnote{83}

The research established that local chiefs and ward representatives were upset that their input was not adequately considered in refugee management, even in the development of ICDP, yet they were the closest authorities to the host community. Further dissatisfaction was manifested by demonstrations in Dadaab which cordoned the UN complex for more than a week in December 2017. These local dynamics have been factored in by the UNHCR, which has pledged to build amenities that will be beneficial to the local population in consultation with the county ward representatives and local subcounty chiefs. Also included in the UNHCR’s strategy is the construction of police stations and providing police in the county with housing, allowances and up-to-date patrol vehicles as incentives. Further, the UNHCR with its implementing

\footnote{80}{Interview, Chief Officer, Trade and Enterprise Development, Garissa County government, 26 February 2018.}
\footnote{81}{A document with a consolidated view of refugee-related programmes being implemented by humanitarian actors, including the UNHCR, NGOs, United Nations agencies and government entities in counties hosting refugees, in this case at Garissa.}
\footnote{82}{http://www.unhcr.org/ke/kalobeyei-settlement}
\footnote{83}{Interview, Chief Officer, Trade and Enterprise Development, Garissa County Government, 26 February 2018.}
partners is holding regular consultative and lobbying meetings with local authorities and politicians to foster goodwill for the 2018–2022 ICDP.84

The socio-economic integration of both voluntary and forced migrants is not currently an area of focus for the national government, however. In March 2017, the government of Kenya, through the IGAD Nairobi Declaration, pledged to facilitate and expand business infrastructure and opportunities for refugee populations in order for them to pursue sustainable livelihood opportunities in trade occupations (IGAD, 2017a). The extent to which the government has made true on its pledge could not be ascertained by this research.

Kenya has also not given attention to the development potential of labour migration within the EAC and Africa at large. Despite the president’s declaration in November 2017 (Agutu, 2017) to offer visas on arrival to African migrants and to waive work permit fees to members of the EAC, very little has been done to sensitise citizens and government officials on the intricacies and potential of the fee waiver. However, African migrants from outside the EAC have been the hardest hit by the 2016 directive by the Department of Immigration (PACIN, 2018b) to limit the number of work permits issued to foreigners due to a national focus on localising the labour force and utilising the talents of the Kenyan population.

The current focus is on Kenyans. I mean why would you bring in someone from Uganda or Tanzania who can do what a Kenyan can do? We have so much unemployment it only makes sense to focus on Kenya. We do not import labour; rather, we facilitate the exporting of labour so that the unemployed Kenyans can go abroad and develop themselves and Kenya.85

The CEO of PACIN had a different perspective regarding work permits:

It is almost impossible to get a work permit in Kenya and this is affecting the overall economy. I know of a lot of regional and international organisations who have headquarters in Nairobi but have set up offices and moved their employees to Uganda and Ethiopia because of the ease in getting work permits there. Of course, they pay taxes to these countries and these employees spend their money in their contributing to the overall development of these countries.86

The Kenya Private Sector Alliance has been at the forefront of efforts to implement the EAC protocol on free movement of people and goods, citing the development potential

84 Interview, Dadaab Area Manager, UNHCR, Dadaab, 17 January 2018.
86 Phone interview, CEO, PACIN, 27 February 2018.
of opening borders to enable free movement of labour and goods. Law, medical and academic professional associations have been able to harmonise, implement and facilitate the absorption of professionals in EAC labour markets.87

**Regional initiatives**

These local initiatives can be supported by ongoing efforts at the regional level to protect migrant rights. Regional bodies such as IGAD have been working together with partner states and agencies to pave the way for durable solutions for Somali refugees. In March 2017, IGAD issued the Nairobi Declaration on Durable Solutions for Somali Refugees, accompanied by a Comprehensive Plan of Action (IGAD, 2017a and 2017b). Within the Comprehensive Plan, Kenya pledged to continue to:

- Enrol refugees in training institutions at all levels;
- Allocate financial resources towards the development of infrastructure and social amenities;
- Expand access to economic opportunities and social services in refugee-hosting areas; and
- Provide access to health services and facilities to refugee populations.

Three further pledges Kenya made were to:

- Undertake self-reliance and inclusion measures, including providing economic opportunities;
- Facilitate legal status for those refugees with legitimate claims to citizenship and/or residency in Kenya through marriage or parentage as per the laws of Kenya; and
- Facilitate and expand business infrastructure and opportunities for refugee populations in order for them to pursue sustainable livelihood opportunities in trade occupations.

Implementing the commitments made and ensuring that lessons learned benefit other REC initiatives will be critical in order for gains made on the forced migration agenda to be translated into pledges on labour migration.

**Migrants’ lived experiences**

**In urban areas: Nairobi**

Forced and voluntary migrants in Nairobi are generally living harmoniously with
the host community, although some FGD participants reported feeling discriminated against by locals. In urban areas, forced migrants were less willing to forge relationships with the locals out of fear that they would inevitably have to disclose personal information about themselves, which could ultimately threaten their security. Local CSOs have observed this division and developed programming to help locals and migrants connect.

Migrants have restricted opportunities to access both formal and informal employment as a result of the Kenyan government’s work permit regulations. These barriers are compounded by migrants’ lack of English and/or Kiswahili language skills, which are required across most sectors. One of the more prevalent concerns among migrant populations that does not affect locals is a fear of moving around due to police harassment and threats of being taken to refugee camps. While nationals are free of this concern for themselves, they nevertheless were also found to face police harassment.

Locals felt that refugees and asylum-seekers had better opportunities available to them in terms of access to basic needs (e.g. food, accommodation, stipends), as various local and international organisations based in Nairobi provide these items to beneficiaries for free. Nevertheless, locals reported having better opportunities when it comes to accessing healthcare, as only registered refugees and migrants in the formal job sectors were covered by the NHIF. Education was free for both migrants and locals at the primary levels. This was not the case for higher education, as the government only subsidised fees for Kenyan citizens.

In border areas: Garissa

In Garissa town, weak ties exist between voluntary migrants from Tanzania and Uganda and the host community. Migrants face discrimination and live in a segregated area with other EAC migrants, limiting their interactions with locals. This segregation was also an issue for internal migrants from other parts of Kenya. It appeared that because of religion these groups rarely intermingled. Exchanges with the local population were limited to the EAC migrants providing formal and informal labour to the host community.

Comparatively, refugees and asylum-seekers from Somalia were found to have close ties with the local population. There are high incidences of intermarriage and of being hosted and protected by locals when faced with police harassment. Local populations reported positive perceptions of Somali migrants and even considered some to be family members based on Somali clan structures.

In Garissa, voluntary migrants from the EAC had access to county government services such as hospitals and schools, on a par with local populations; however, they had limited employment opportunities. Forced migrants, on the other hand, avoided government health and educational institutions out of fear that they would be referred to a camp. As such, they opted for private schools and private hospitals in Garissa.
Migrant voices

Access to information

Migrants in Nairobi and Garissa generally have limited access to information, specifically with regards to the legal frameworks aimed at protecting them. Garissa town fared worse, as none of the respondents knew any organisation that dealt with migration issues in the town.

We haven’t been able to acquire that knowledge so we don’t know. No one has told us anything concerning our rights. We do not have any contact with any organisation here in Garissa.\(^88\)

This can be attributed to the fact that Garissa is largely a transit town. Most organisations dealing with forced and voluntary migrants have offices either in Nairobi or Dadaab refugee camps. RCK, while based in Garissa town, limits itself to sensitising stakeholders and legally representing migrants in Garissa law courts. It offers legal clinics only in Dadaab refugee camps.

In Nairobi, it transpired that despite the availability of legal clinics, there was a stark difference between the number of migrants in Nairobi vis-à-vis the number of legal clinics offered by CSOs (Kituo Cha Sheria and RCK) in collaboration with the UNHCR. Demand outdid supply due to limited funding. As such, CBOs – notably LAFRIKANA and UMMA – and community paralegals were trained by the above CSOs and the UNHCR to fill the existing information gaps at the local level. These initiatives were found to be very resourceful, as underscored by the following respondent:

We have a guy who keeps us in tabs. The community leader who is in contact with organisations like UNHCR. When I have a question he always said that he will ask and then get back to me.\(^89\)

Lack of information was found to curtail labour migration in the country, as relevant government ministry websites had limited and outdated information. Word of mouth via government officials and friends was thus the most prevalent way of getting information. However, there was often misinformation regarding this channel of communication:

When I was coming to Kenya from Tanzania, I was told at the border that I have to go back every three months to have my passport stamped. I have

\(^88\) Participant, Migrant FGD, Garissa Town, 9 January 2018.
\(^89\) Migrant FGD, Ruiru, Nairobi, 13 January 2018.
done this twice in the past ten months since I came here. I had no idea that I can live and work here for more than three months.  

Social networks proved to be a vital resource to migrants in both Garissa and Nairobi, whether to access information about the best migration routes, about registration, informal job openings and cheap housing, or to secure the necessary knowledge to navigate the city whilst avoiding police harassment.

One of my Rwandese friend taught me a bit about avoiding the police and how to get jobs in Garissa when I got here but he later moved back to Rwanda. By the time he left I knew everything.

I decided to register to be a student at Aga Khan University Hospital because of my Kenyan friends who I studied with during my undergraduate studies in Makerere. They told me that it is a very nice place and informed me of what was needed for me to apply for residency in the hospital and the documents I needed to get a student’s pass.

Migrants mainly rely on information from their social networks. The more years migrants spend in the country, the more their social capital grows and their protection with it. Social networks make it easier to facilitate shelter, as most of the migrant respondents lived with their friends and family before moving out.

When I came to Kenya I knew no one. But since I came to Kenya in 2014, I now know where hospitals are, who can give me food and sometimes rent.

I stay with my aunt; her husband is in South Sudan. We live together with other relatives because rent is cheap that way.

**Access to legal representation and concerns over police harassment**

None of the FGD participants in Garissa and Nairobi had had access to legal representation. When detained, they resorted to paying bribes to be released:

I was taken to the police cell and spent the night there [...] I gave them money and they released me [...] I gave them KES 10 000.
The police also arrested me and released me at 12.00 am after paying KES 500 and it was very scary for me.\textsuperscript{96}

The latter migrant from Nairobi was a registered refugee with a valid refugee identification card at the time of arrest, calling attention to the limited reach of CSOs offering legal representation to refugees and the further need for police sensitisation. The migrants interviewed reported facing extensive police harassment, with some respondents having been detained and released only after paying hefty bribes. There was a discrepancy in arbitrary arrest between migrants from the Great Lakes regions and those from the northern bordering countries of Somalia, Ethiopia and Sudan. This was attributed to the latter’s visible ethnic markers (physical and clothing) as opposed to Burundian, Ugandan, Tanzanian and Congolese migrants who blended and shared the same physical features with the local population. However, the local community also faced police harassment but the repercussions were not as dire as for immigrants.

I personally was arrested [...] In Mwingi heading to Garissa [...] I was told to produce Kenyan ID and I didn’t have none because I was from Uganda [...] They told me that I had come to Kenya through corrupt dealings. I told them that wasn’t the case and they told me to give them Ksh 2 000 if I wanted them to let me go.\textsuperscript{97}

This position was reiterated by other respondents in Nairobi:

Yes, I have been arrested [...] I was coming from Dadaab to Ruiru after visiting my mom [...] I told them I didn’t have any documents coz I was still a student and I was going back to school. I stayed in jail for three days until a lady friend of mine came and helped.\textsuperscript{98}

This is contrary to a claim made by an international student from Uganda:

I have been stopped by the Kenyan police a couple of times in Nairobi because I drive a car with a Ugandan number plate but once I show them my student ID and alien card they let me go. I would not say I have faced any problem with the police. I do not fear them.\textsuperscript{99}

\textsuperscript{96} Migrant FGD, Kaberia, Nairobi, 10 January 2018.
\textsuperscript{97} Migrant FGD, Garissa, 19 January 2018.
\textsuperscript{98} Migrant FGD, Ruiru, Nairobi, 13 January 2018.
\textsuperscript{99} Phone interview, Migrant, 23 February 2018.
The fear of arrest had a direct impact on the movement activities of forced migrants in Nairobi and both voluntary and forced migrants in Garissa, with most of the migrant respondents in the latter town ensuring they were home before sunset to avoid trouble with the police. Parties and social gatherings were equally avoided:

\[
\text{[...]} \text{You can’t walk freely if you don’t have an ID card. Many times I have turned down invites for weddings and other parties that would go to the evening because I can’t walk at night. Police are active at night than during the day.}^{100}
\]

The study found that labour migrants without work permits and alien identification cards were more afraid to venture out and travel than those with IDs. This fear also impacted on their decision not to travel out of the country to visit their kin, although exceptions were noted:

I have not gone back to Uganda because I fear I would be arrested along the way […] they can’t even tell if [I] am alive or dead.

I go back to Uganda as often as I can. I drive there and back. So far I have had no problem other than the normal routine police checks.\textsuperscript{101}

**Access to formal and informal labour**

Access to labour is highly contingent on documentation and specifically the possession of a refugee alien card. Most of the migrants who participated in the FGDs cited that it was hard to get jobs in Kenya without documentation.

From my end, finding work is hard as they do ask for identification cards, consequently paying rent is hard, finding food is hard and now the language is a barrier too as I do not speak English properly.\textsuperscript{102}

Employers only want Kenyan IDs.\textsuperscript{103}

For labour migrants, stringent work permit regulations limit access to the Kenyan labour market. Most migrants reported being embedded in the informal labour market and working in the country without permits. Domestic workers are the majority in this regard, with Ugandan women being popular in Kenyan households when it comes to importing domestic labour.

\textsuperscript{100} Migrant FGD, Garissa, 19 January 2018.
\textsuperscript{101} Phone interview, Migrant, 23 February 2018.
\textsuperscript{102} Migrant FGD, Kaberia, Nairobi, 10 January 2018.
\textsuperscript{103} Migrant FGD, Garissa, 19 January 2018.
My wife has been looking for a job here in Kaberia but most of the time Kenyans prefer Ugandan maids. They say Ugandans are hardworking and Tanzanians are slow.\textsuperscript{104}

Interviews revealed that some Kenyan employers took advantage of the migration status of immigrants, and mistreated and threatened them with police exposure.

When I reached Nairobi I was told my earning were to be deducted because I didn’t have an ID. I worked in Nairobi for eight months and moved to Garissa after meeting my fellow migrants’ friends who were coming to Garissa for good money […] here too we were threatened that we would be reported to the authorities every time we asked about the salary issue.\textsuperscript{105}

**Gender dynamics**

The female forced migrants who participated in the FGDs in Nairobi lived in female-only households as the men remained in their home countries or had died during war. This necessitated migrant women living in large groups out of fear of harassment.

I live with my sisters in Ruiru […] We travelled together from Gabolla, Addis, Mandera then to Eastleigh […] Then we called our relatives to come pick us. We are all women.\textsuperscript{106}

I live with my aunty and her friends because I have to go to school here. My mother is in Dadaab. Our father remained in Sudan; my mother says she does not know if he is still alive because we have never heard of him since we came.\textsuperscript{107}

This migration trend notably resulted in the abduction of young Sudanese girls by relatives:

Girls disappear mysteriously; most of their husbands’ families come to take girls here in Nairobi and take them to Sudan to marry them off even to the extent of abduction.\textsuperscript{108}

Other than the above-mentioned issues, there was little difference with regards to male and female migrants in Nairobi and Garissa. It was even determined that there

\textsuperscript{104} Migrant FGD, Kaberia, Nairobi, 10 January 2018.
\textsuperscript{105} Migrant FGD, Garissa, 19 January 2018.
\textsuperscript{106} Migrant FGD, Ruiru, Nairobi, 13 January 2018.
\textsuperscript{107} Ibid.
\textsuperscript{108} Ibid.
were more NGOs focused on the protection of women as opposed to men, such as Womankind, Heshima Kenya and Sisters Maternity Home.

Local perceptions
Most of the local FGD participants interviewed in Nairobi and Garissa perceived migrants positively and affirmed their receptiveness to migrants:

> We are always on good terms with our neighbours who are from Somalia. They are like our brothers; if any disagreement arises we try sort it out through consultation with the elders first before forwarding the issue to authorities.¹⁰⁹

Despite having ties with the migrants in their localities, the local respondents noted that migrants were often guarded in their relationships. They understood that the basis of this behaviour is due to fear of police and strangers:

> They fear talking and opening up to other people. It is like there is something they are hiding.¹¹⁰

Positive discrimination
The locals in Nairobi often considered that asylum-seekers and refugees lived better lives than they did and were more favoured. They considered themselves to have more problems than refugees and asylum-seekers specifically, who received assistance not provided to other migrants or to locals:

> In my opinion, I think they are way better as their housing is paid for, they are given free food and the only issue they face like us is probably the lack of water. They do not even do these jobs like washing clothes for people; they just get help from agencies.¹¹¹

Similar sentiments were not expressed by locals in Garissa. There was, however, the feeling that refugees had pushed the prices of commodities higher and consequently raised the cost of living in Garissa.

> Commodity prices have increased since people have started flocking in. Back then these things were quite cheap.¹¹²

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¹⁰⁹ Local FGD, Garissa, 16 January 2018.
¹¹⁰ Local FGD, Kaberia, Nairobi, 10 January 2018.
¹¹¹ Ibid.
¹¹² Local FGD, Garissa, 16 January 2018.
Police harassment

The issue of police harassment was found to cut across both migrants and locals in Garissa and Nairobi.

There was a day my husband was coming from work at night, and he was arrested by the police who wanted him to pay KES 1,000 for him to be released. They do arrest innocent persons all the time.¹¹³

They harass us, they search all the houses to check for the IDs [...] They even enter our houses to flash out refugees.¹¹⁴

Despite police harassing the locals, the consequences cannot be compared to those faced by migrants, as the latter group always faces the threat of higher bribes, protracted detainment and, in the worst cases, refoulement.

Conclusions and recommendations

The research cautions against certain trends that have, in recent years, led to the restriction of work permits and freedom of movement for all migrants. The implementation of existing policies needs to be respected while reforms should not curtail migrants’ freedoms.

The report notes key practices at the national and local levels that impede migrants from accessing protection. These include the lack of policy implementation, the securitisation of migration, the lack of integration of migration in development plans, and a restrictive focus on limiting immigration and focusing on outward migration. Available regional frameworks (such as the EAC) remain an untapped resource for economic development and poverty reduction. The specific situation of EAC migrants, particularly youth and women, deserves additional research and attention. Given the rise in the feminisation of migration, women’s contribution to development through migration can ensure that current trends of migration are built upon to add value for all.

The most immediate needs are related to the domestication of regional commitments, to providing information and sensitisation campaigns to all stakeholders, and to initiating a positive dialogue on migration in Kenya at national and local levels. The limited awareness of legislative frameworks by government officials, migrants and citizens calls for a comprehensive effort to bridge the information gap and sensitise stakeholders to the existing policies and possibilities to benefit from migration. Whether through the lens of devolution at the county level or through sectoral interventions,

¹¹³ Local FGD, Kaberia, Nairobi, 10 January 2018.
¹¹⁴ Local FGD, Garissa, 16 January 2018.
the provision of assistance to migrants can benefit the local population. The current focus on refugee protection should be accompanied by a similar and growing focus on ensuring that labour migrants are supported.

To address the gaps identified in this research, this report concludes on a set of recommendations.

**At the national level**
The government should:

- Facilitate open access to migration data;
- Collaborate with the private sector and labour unions to develop frameworks that can facilitate the protection of labour migrants;
- Commit to fully implementing the Refugees Act (2006) and finalising the National Migration Policy and other policies in draft form;
- Meet its refugee and asylum-seeker obligations under the 1951 UN Convention and its 1967 protocol, specifically with regards to free movement and the right to work;
- Fulfil the 2017 IGAD Nairobi Declaration pledge of facilitating refugee self-reliance, notably the right to work and access to business licences;
- Clarify and simplify immigration and work permit processes to facilitate the regularisation of irregular EAC migrants without conditionality;
- Develop and implement frameworks that capture the development aspects of migration; and
- Sensitise law enforcement officers on the legislative frameworks governing migration.

INGOs and other stakeholders should:

- Build the capacity of government officials working in ministries, county offices and border posts;
- Work with CSOs and NGOs in a twinning approach to address migrants’ needs;
- Identify opportunities for advancing rights for refugees and other migrants to further an agenda around mobility, rights and livelihoods;
- Support development actors working with county governments on questions of fiscal revenue and local government support; and
- Support local authorities through referral systems when issues arise at the local level with regards to foreigners.

**At the local level**
The Garissa County government should:

- Outline a plan for durable solutions as espoused in the draft 2018–2022 ICDP;
• Partner with humanitarian and development actors to discuss transitional solutions, and social and economic cohesion programming between local and refugee populations;
• Actively engage local politicians and community leaders in implementing the ICDP;
• Sensitise and build the capacity of county authorities in financial management and planning; and
• Involve police officers and border officials more routinely in legal reviews, trainings and referral processes.

INGOs, NGOs and CSOs
A key strength in Kenya has been the ability of non-governmental counterparts to influence migration policy development, legal decisions and outcomes on access to services. The government provides the space for these organisations to grow. This should be further capitalised on to:
• Set up a consortium of CSOs and NGOs committed to bridging the refugee migration and labour migration divide to advance an agenda on mobility and rights;
• Conduct sensitisation campaigns with senior officials on field realities and entry points for policy implementation;
• Train county government actors to further elaborate on linkages between migrant protection and the county development plans;
• Identify opportunities for taxation, legal documentation, education and health for migrants; and
• Work with academia and researchers to build the evidence base on the benefits of migration for local economic development and social cohesion.

References


Executive summary

Tanzania has recently restricted refugee and migrant populations’ access to protection. Once proud of its Pan-African ideology and practice, Tanzania has steadily shifted toward more nationalist policies. On the refugee front, 2018 marks a shift in protection frameworks as the government announced its withdrawal from the global CRRF citing concerns about security and funding. The historical roots of this decision matter. The government of Tanzania and the international community had for decades negotiated possibilities for naturalisation of non-nationals. On this basis, Tanzania created an open-door policy for refugees. While the planning process of CRRF attempted to build on this foundation to advance more liberal and inclusive migrant policies, donor commitments to implementation and funding stalled.

The situation for labour migrants in Tanzania differs from that for refugees. Yet here too one sees similar policy contradictions that have to be resolved if migrant worker protection, and corresponding benefits for development, are to be ensured. On paper, nationals of EAC member states have progressive legal entitlements in Tanzania. Yet in practice, most EAC migrants have precarious status, staying and working in the country irregularly for a number of reasons. Correspondingly, policy and legal reform have shifted to restrict the movement and social and economic incorporation of migrants. This creates a significant degree of vulnerability for international migrants, particularly for those who have irregular status.

This case study examines the most prominent challenges to securing protection for refugees and other migrants in Tanzania. It examines recurrent legal, economic and social concerns that were expressed during interviews, including:

- *Refugees and non-refugee migrants do not have equal access to protection:* Legal opportunities for citizenship and the right to work are continually shifting. This has curtailed possibilities for refugees and other migrants to carve ‘spaces of belonging’ for themselves, as well as to maximise the benefits of migration for their host communities and places of origin. In this regard, both groups of non-Tanzanians are
disadvantaged. Legally, non-refugee migrants have superior rights to refugees, and EAC nationals are privileged over other non-EAC migrants. However, neither group has access to family reunification, nor a slew of other rights that are available to nationals.

- **Securitisation and surveillance weighs on migrants from both the top down and from grassroots levels:** In addition to the restrictions associated with conservative national governance, Tanzania has a complex system of subnational representation and reporting that compromises solidarity with and rights of migrants. Village officials are instructed by the central government to report migrants to the immigration office; they are supported by ward officers who are also instructed to provide information about migrants that arrive in their localities. Border management officials rely on village chairpersons, village executive officers, ward executive officers, and ward migration officers as part of a system of information gathering that supports the central government’s tracing of migrants. The role of the international community and its normative frameworks are peripheral in their view and are mainly useful in facilitating returns.

- **There is a tendency to punish rather than protect migrants:** Border management officials report that if irregular migrants are found settled in or transiting through Tanzania, they are arrested, detained and eventually returned to the border. While the government facilitates entry of regularised EAC migrants – through fee waivers and longer-term visas – their access to legal protection is compromised because Tanzania does not provide opportunities for low-skilled workers or for access to services. FGDs reveal that access to health is available but that migrants are charged rates as high as tenfold the price that local citizens pay.

This case study records various perceptions of the restrictions that migrant populations face and reveals opportunities to advance practices that enable and support migrant protection. The primary recommendations that emerge are as follows (the final section of the report contains the full set of recommendations):

- **CSOs and (I)NGOs can work together** to reach urban refugees and other migrant groups. A network of CSOs called TAREMINET has recently come together to help refugees access the asylum system; they also plan to provide migrant populations with services that are typically provided by the public sector, such as healthcare through mobile clinics. By working more closely with (I)NGOs in Tanzania, TAREMINET can expand its reach and reduce vulnerabilities of all varieties of migrants.
Government and regional representatives must be engaged in dialogue on migration-related issues. Civil society needs to hold government accountable, demanding improved development and protection of rights for migrants in the midst of increasingly hostile public policy. A conversation between CSOs and Tanzanian authorities is planned for 2018 to establish entry points for policy reform. Bilateral initiatives are also in place and can be supported in order to be scaled. These efforts need to be sustained. From the benefits of competition, the transfer of skills, and entrepreneurial activities, migrants’ contributions to Tanzanian society need to be documented and publicised to pave the way for reform that can open up a window for legalisation and documentation of irregular labour migrants.

Municipality and local officials must be trained on legal and policy entitlements of refugees and other migrants, to ensure that migrants can acquire documentation in order to access public services and permits for work so that they can make fiscal contributions to the economy.

Lawyers and activists must be supported in monitoring officials’ activities to ensure migrants access protections to which they are entitled.

The report concludes on the opportunities for greater refugee and migrant protection through the RECs as Tanzania is part of the EAC and SADC. Where global frameworks have not managed to unlock solutions for migrants, regional platforms can. This is an opportunity to focus discussions at a regional level and mainstream migration through a regional integration agenda, as well as to discuss the implementation of a continental AU framework on migration and the alignment of regional, national and local practices. Bringing the refugee and the mobility conversation together can help address challenges common to the protection of all migrants in Tanzania.

Introduction

Tanzania’s migration regime is at a critical juncture. As an EAC member state, Tanzania has historically played an important role in hosting large numbers of refugees and other migrants from surrounding EAC member states, including Kenya, Uganda, South Sudan, Rwanda and Burundi. In February 2018, actors across the region were surprised when the government unexpectedly announced that it would be withdrawing from the UNHCR’s global efforts to reform migrant governance through the CRRF. Tanzania had planned on being one of the key pilot countries within the CRRF. President John Magufuli’s retreat was premised on the government’s alleged concern about security and funding. Fieldwork for this research was conducted in the month prior to this shift in cooperation.
Looking at other migration groups, the case of Tanzania is particular within the region. The country has experienced a significant decrease in rates of emigration. While the number of Tanzanians migrating outward (most often to another EAC country) has decreased, immigration figures have increased. These trends do not incentivise domestic or regional arrangements that are favourable to non-Tanzanian nationals.

This case study identifies and analyses gaps and obstacles in Tanzania’s migration laws, policies and practice. The goal is not to provide data on migrants or to draft a policy review, but to enhance an understanding of the current climate and possibilities. The empirical study of migrants – encompassing labour migrants, refugees and asylum-seekers – informs opportunities for legislative and policy reform. In order to improve the governance and management of migration in Tanzania, this study:

• Identifies practices that impede or enable migrants to secure protection;
• Identifies the potential obstacles or drivers to progressive change; and
• Compares the experiences of migrants with those of the host community.

Methodology

This case study presents insights from policy-makers, practitioners, CSOs, migrants and non-migrants. It elaborates on the policy contexts, practices, obstacles and opportunities for migrant protection in Tanzania through a review of qualitative data collected in one urban site (Dar es Salaam) and one border area (Tanga), described below. The research team, comprised of two Tanzanian nationals, collected data in January 2018.

The methodology was purely qualitative, encompassing semi-structured key informant interviews and FGDs. The team conducted a total of 20 interviews across Dar es Salaam (12) and Tanga (8) with national and international organisations knowledgeable in local migration dynamics and free and safe movement (Table 3). CSOs, pro-poor organisations and migrant associations were also interviewed.

<table>
<thead>
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<th>Category</th>
<th>Dar es Salaam</th>
<th>Tanga</th>
<th>Total</th>
</tr>
</thead>
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</tr>
<tr>
<td>CSOs</td>
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<td>International organisations</td>
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</tr>
<tr>
<td>Total</td>
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<td>8</td>
<td>20</td>
</tr>
</tbody>
</table>

Table 3: Key informant interviews conducted in Dar es Salaam and Tanga, Tanzania
Researchers held FGDs with migrant and local populations to determine the degree to which migrants face specific vulnerabilities, and to identify specific interests in the local community that can work in favour of or against migrants. Four FGDs were conducted in Dar es Salaam and Tanga during the research, with a total of 22 participants. The team facilitated two FGDs with local community representatives and two with migrants. Men and women participated in all four FGDs. The FGDs were conducted in Kiswahili without translation.

<table>
<thead>
<tr>
<th>Country of origin</th>
<th>Dar es Salaam</th>
<th>Tanga</th>
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<td>Uganda</td>
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<td>–</td>
</tr>
<tr>
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<tr>
<td>Burundi</td>
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<td>–</td>
</tr>
<tr>
<td>Democratic Republic of Congo</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td><strong>Total number of participants</strong></td>
<td><strong>11</strong></td>
<td><strong>11</strong></td>
</tr>
</tbody>
</table>

### Field site overview

Dar es Salaam is Tanzania’s largest urban centre and one of the fastest growing cities in Africa. It is a key destination for rural to urban internal migration: according to the 2012 census (Government of Tanzania, 2015), 30% of the population in Dar es Salaam are internal migrants. There are no publicly available data on labour migration stocks in the city. Nevertheless, it is apparent that there is a great deal of hostility directed toward non-Tanzanians in the city. In February 2017, the East African newspaper reported that ‘the Regional Immigration Office in Tanzania’s commercial capital Dar es Salaam has embarked on a crackdown on foreigners without residence or work permits [... And] against officials who issue foreigners with fake documents’ (Mwalimu, 2017).

According to the UNHCR, 217 urban refugees were registered in Dar es Salaam as of October 2017. There is no conclusive estimation of the number of unregistered refugees living in the city but refugee rights NGO Asylum Access estimates that there may be over 10,000, most of whom have no access to protection or social services due to their lack of documentation.

Tanga is an urban port town on the north coast, host to seasonal foreign migration, especially in sisal plantations. The IOM estimates that over 50,000 migrants are settled in villages in Tanga region—mostly from Kenya, Mozambique and Somalia (IOM, 2017). Moreover, Tanga is a transit area for migrants from the Horn and East Africa as they make their way to South Africa, Europe or the Middle East. Policy-wise, in February 2017 the government of Tanzania launched a biometric registration system for irregular migrants in the country’s Tanga region; this has been operationalised by the Ministry of Home Affairs’ Immigration Department in collaboration with IOM. Migrants are being registered and provided with a personalised laminated photo ID card, which allows them to remain in Tanzania for up to two years while their immigration status is determined by the Tanzanian authorities. The Chogo settlement in Tanga region is also home to refugees from Somalia, with an official population of 150. Interviews in Tanga were held in the urban capital and in nearby Mkonga, to access migrants and officials on the border.

Limitations
The data collection took place at a particularly volatile time in Tanzanian politics, just ahead of the announcement that they were withdrawing from the CRRF process. At times it was difficult to schedule meetings with stakeholders. Another limitation stems from the fact that certain stakeholders—particularly local authorities and border officials—lacked clarity and the ability to reflect on the migration and protection trends. Their knowledge limited a potential dialogue on safe and free movement. This was a finding of its own, highlighted in this case study and the regional report, reflecting the fragmentation of knowledge on migration issues. Lastly, due to the irregular nature of migration in Tanzania, and the practice of nationals reporting migrants to officials, the migrant population was sceptical about participating in the research out of concern that the information and data collected could be misused.

Opportunities and drivers of migrant protection

Tanzania’s legal policy framework
Tanzania has developed domestic legislation and policies and ratified regional frameworks that explicate the rights of non-Tanzanian migrants. In practice, migrants come up against many restrictions and challenges in accessing protection, whether due to legal prohibitions or hostile processes. At the core of migrant governance in Tanzania, the Constitution distinguishes between ‘persons’ and ‘citizens’, explicating rights that are restricted to citizens, such as freedom of movement (Art. 17), and those that are technically available for all. On paper, all people have the right to access

116 Ibid.
education (Art. 11) and equal protection of the law without any discrimination on the basis of nationality (Art. 13(4) and 13(5)). However, there are legal gaps, and even more enforcement gaps, that leave non-citizens vulnerable. For instance, it is unclear what legal pathways exist for naturalisation of refugee populations. Refugee lawyers explain that within the citizenship law, children born to refugees in Tanzania may qualify for citizenship; others claim the law does not apply to refugees. Such examples illustrate the many contradictions in discourse and legislation concerning migrant protection in the Tanzanian context, and more broadly in the region.

Recent amendments to the Immigration Act of 1995\textsuperscript{118} allow the government of Tanzania to exert greater control over migrant communities. Immigration authorities are given wide-ranging powers to manage non-Tanzanians in the country. They are entitled to conduct searches and make arrests without warrants on the basis of ‘reasonable cause’ (s.17). The amended Act defines the category of a ‘prohibited immigrant’ (s.23), which includes ‘vulnerable migrants’: destitute persons, persons suffering from mental disorders, persons with diseases which may pose a danger to the population, and those engaged in illicit activities such as prostitution. Dependents of these individuals are also classified as ‘prohibited’, by extension. If, however, a ‘prohibited migrant’ holds a valid permit, the restrictive provisions of section 23 do not apply to them. The minister is generally empowered to cast final decisions on who qualifies as a ‘prohibited migrant’; as such, non-citizens are vulnerable to the shifting decisions of the political elite.

In the case of refugees, as regulated by the Refugees Act of 1998,\textsuperscript{119} individuals can claim status within seven days of entering Tanzania. Irregular entry does not disqualify a person from claiming asylum, and refugees or asylum-seekers who receive a permit may remain in Tanzania (s.12) but will be required to reside in designated areas (s.17). Most of the permits place conditions upon the locations where these individuals can reside and the sectors in which they can work. Free movement is not authorised in the Constitution and is further curtailed in the Immigration Act for refugees and other migrants.

Access to some services – such as education – is protected. Section 56 of the National Education Act (1978)\textsuperscript{120} specifies that every refugee child is entitled to primary education and every refugee adult who desires to participate in adult education is entitled to do so in accordance with the Adult Education Act. Refugees may also obtain work permits (s.32). The Non-Citizens (Employment Regulation) Act of 2015 further regulates access to work on the Tanzanian mainland. The Act requires effective authorisation from two different sources: the Ministry of Labour and Employment (for the work permit) and the Ministry of Home Affairs (for the residence permit). It supplements the existing


\textsuperscript{119} http://www.refworld.org/docid/3ae6b50bf.html

\textsuperscript{120} http://www.unesco.org/education/edurights/media/docs/873ae01bc28cf44989595c7cac2a419d3ede5fd.pdf
National Employment Promotion Service Act of 2002. The work permit is mandatory for any non-citizen to take up employment of any kind in Tanzania (s.9). This needs to be applied for by the employer (s.10), who needs to pay the required fee and have a ‘succession plan’ that outlines how the work being done by non-nationals will be transferred to a Tanzanian citizen within a specified number of years (s.7).

In 2017, the government and relevant agencies – including the UNHCR and CSOs – reviewed the Refugees Act of 1998 and the Non-Citizens Act of 2015 to increase migrants’ access to employment in Tanzania. The reviews were part of commitments made under the CRRF process, initially intended to fast-track a set of improvements in refugee protection, notably on access to employment. The revisions were meant to reflect on the Non-Citizens Act of 2015, which stipulates that ‘a non-citizen shall not engage in any occupation for reward, profit, or non-profit unless he or she has a valid work permit that allows them to engage in the occupation’ (Art. 9, s.1). These policy improvements have been nullified in the wake of Tanzania’s withdrawal from the CRRF.

**Practices undermining migrant protection**

Migrant protection in Tanzania is being undermined by exclusionary policies and practices. The withdrawal of commitments to refugee protection is paired with the rejection of newly arriving asylum-seekers. Practices that include requiring local Tanzanians and authorities to inform on migrants are paired with a discourse on migration threats – such as public health concerns. With national and local practices being paired in such ways, the restrictive environment expands from a national discourse to a local reality. This cycle needs to be broken to ensure greater access to documentation and services and greater understanding of migrant rights. Current practices contradict these needs and undermine migrant protection.

**Exclusive policies and negligent practices**

Tanzania confirmed its decision in early 2018 to withdraw from implementing the CRRF, which was adopted by 193 member states as a result of the New York Declaration to address situations of large-scale displacement. This decision was accompanied by statements that Tanzania would reject new asylum-seekers who arrive in the country, which the European Commission’s Directorate-General for Humanitarian Aid Operations claimed could amount to *refoulement* under international refugee law. This occurs in a...
broader context of tightening border measures after *prima facie status was revoked* for new arrivals in January 2017 and replaced with a case-by-case RSD process. According to the IOM, the arrival rate of Burundian refugees in Tanzania dropped by 98% between January and June 2017. Furthermore, government representatives that were interviewed stated that the immigration department of Tanzania has managed to forcibly repatriate refugees and other migrants to the camps or to their countries of origin if they do not abide by the law.

*Alleged public health concerns* are another argument used by the government to reinforce restrictive policies. Refugees are hosted in three camps in Kigoma region (Nyarugusu, Mtwendeli and Nduta). The camps are overcrowded and have limited services available, in particular an inadequate number of schools, shortage of water, and poor health and nutrition facilities. Malaria is a leading cause of morbidity among refugees, accounting for ‘over 30% of all Out-Patient Department (OPD) attendances’. In January 2018, the president of Tanzania banned Zambians from entering the country due to the spread of cholera. Border posts were instructed to close entry to anyone from Zambia to prevent a cholera outbreak in Tanzania.

Furthermore, interviewees indicated that there is a *strengthening of government efforts to trace migrants* in the country. A border management representative spoke of the role of village officials and ward officers in reporting information about migrants who are newly arrived in their localities directly to the central-level migration office. Border management officials rely on the information provided by the village chairperson, village executive officers, ward executive officers and ward migration officers to inform central government’s decisions. Offices at the city or town level facilitated a strong subnational–national collaboration. This allows military personnel to arrest irregular migrants and to work closely with the immigration department to send migrants back to their country of origin. Border officials consider it the role of the UNHCR and IOM to facilitate the return:

*It is very expensive to return migrants to their countries; international migrants are returned through IOM in Dar es Salaam. The government does not have the money; in most cases IOM helps.*

Return is the preferred option according to border management and permit office representatives. The process of return often includes indefinite *detention and imprisonment*. Informants reported that some detained migrants protested these practices by going on hunger strikes during elections.

125 Interview, Head of Border Management and Control Section, Tanga, January 2018.
Local integration options are not provided and opportunities for family reunification are limited. Migrants have access to family reunification options, but only so long as the head of household is a man; reunion is limited to one wife and children below the age of 18 years. The husband has to apply and endorse the permit for all family members.

Lack of documentation and sectoral restrictions create illegality
Access to documentation remains a key issue in Tanzania, for nationals and foreigners alike. Tanzanians do not have identification documents, and it is generally ‘difficult to tell who is a Tanzanian and who is not’. An ongoing study (Samuel Hall, 2018) highlights that within the EAC, Tanzania is the country with the highest proportion of EAC migrant workers without legal documentation (e.g. work permits). Most of the intra-EAC movement to Tanzania comes from Kenya. In spite of a majority who have irregular status, the same study reveals that most of these migrants pay taxes and own bank accounts. Regularising their statuses could bring greater benefits to the country in terms of fiscal revenues.

Tanzanian law currently facilitates lower entry fees and longer permits for EAC nationals. EAC migrants receive a six-month visa while their permanent permit is being processed. Meanwhile, migrants from non-EAC countries are given three-month visas and pay high fees for this. Another benefit of EAC citizenship is the lower restriction on marriage:

A Tanzanian can marry a Kenyan, and a Ugandan can marry a Tanzanian without complications. This is different for other migrants who come from non-EAC countries, as there are restrictions on marriage. They need to go through stricter procedures before marriage.

Yet, such preferential administrative policies are not known about in practice by migrants and employers. As confirmed in the qualitative research for this case study, many migrants are not aware of their legal rights, with consequences for their labour market integration and performance. Stakeholders interviewed confirm that most migrants do not have the required permits to gain employment in Tanzania. This is often due to obstacles within the legal frameworks, such as the unaffordable costs for work permits. While employers are legally required to pay the fees, in practice the worker is expected to pay. In addition, the legal framework on quotas and sector restrictions creates illegality:

Policy demands that migrants who qualify for employment demonstrate that they can fill in the roles that Tanzanians cannot fill. Many are here working in prohibited activities because they were not able to prove their comparative

126 Contribution by the East African CSO Forum as part of a validation workshop at the Open Society Foundation in Johannesburg, 4 April 2018.
127 Interview, Head of Border Management and Control Section, Tanga, January 2018.
advantage. They end up becoming illegal migrants even if their entry was not illegal.\(^{128}\)

The legal framework disadvantages lower-class migrants who cannot pay permit fees and who may not have had the privilege to attend school and acquire the required skills. The bias towards highly skilled migrants leaves the majority of migrants outside of the formal workforce.

Key informants report that registration provides asylum-seekers with access to services on paper. However, in practice, the central government does not fulfil responsibilities beyond registration. In FGDs with migrants, they highlighted that restrictions on access to housing, education and health services are detrimental to their overall protection and that of their children. As one government representative explained:

They have to take care of themselves. The government only registers the asylum-seekers but does not know what the refugee is then doing or where he or she is living. The government is not responsible for that.\(^{129}\)

In terms of accessing education, registered refugees were perceived by interviewees as having preferential access compared to other migrants. Without the legal documentation to reside in Tanzania, urban refugee households and migrant households do not have access to education in government schools:

Education is a problem. This migrant has about seven children and all of them are not in school because they are being denied access to public schools. He tried to apply for a permit but the permits are also delayed. It has now been three years – he is still waiting for his documentation to be processed.\(^{130}\)

Access to health is available but FGD participants report that in practice they are charged at higher rates for services than locals. A Congolese respondent said they had to pay TZS 120 000 for services compared to the TZS 10 000 that a Tanzanian would be charged.\(^{131}\) Furthermore, there are differentiated medical rates for citizens and non-citizens; within the latter group, non-refugee migrants are disadvantaged compared to refugees:

Migrants who go to Muhimbili national hospital are charged a rate almost three times higher than the local patients. For refugees, however, who get

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\(^{128}\) Interview, Immigration Officer, Migration Headquarters, Dar es Salaam, January 2018.

\(^{129}\) Interview, Programme Manager, Relief to Development Society, Dar es Salaam, January 2018.

\(^{130}\) Participant 6, Migrant FGD, Dar es Salaam, January 2018.

\(^{131}\) Ibid.
medical assistance from UNHCR when they go to Muhimbili, they are treated as any other local patient.¹³²

**Fragmentation of knowledge and lack of understanding of the benefits of free movement**

Communities in Tanzania do not have enough knowledge on migration; neither do we have the capacity to deal with migrant-related issues. There is much to be done to develop our capacity. At the local level, we need increased knowledge and understanding of these policies and procedures.¹³³

While management of migration is the responsibility of the Ministry of Internal Affairs, most of their support comes from the local government, which does not understand how the legal system works. They might see a migrant and assume that the person has irregular status. Nevertheless, border management officials consider their efforts to be in the interests of preserving law and order.

The role of the immigration office is to get information from local people regarding migrants in a specific area and to collaborate with police to arrest those illegal migrants.¹³⁴

Government officials perceived the 2016 Act as ‘unfriendly to migrants’ since the law requires migrants coming to work in Tanzania to possess professional skills and qualifications that are not available in the country. While previously teachers from other EAC countries were able to work in Tanzania, the recent law requires that teachers obtain a teaching licence from the country’s Ministry of Education. While the policy shift leads to better registration and teachers’ knowledge within the country, this process is not clear on procedures for foreign teachers. An informant specifically mentioned this revised legal framework and the restrictions have been reinforced through section 8, which outlines sanctions for irregular migrants. Punishments are not well explicated, and judges have the liberty to determine the fine that targeted individuals are expected to pay.

Feedback from local respondents interviewed in this study portrays a general inability to comprehend the potential contributions that migrants can make to national development. In interviews with government officials, securitisation discourse overshadowed considerations about free and safe movement, and rights to work or access services. These security concerns are trickling down from the national to the

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¹³² Participant 3, Migrant FGD, Dar es Salaam, January 2018.
¹³³ Interview, Tanzanian Immigration Officer, Tanga, January 2018.
¹³⁴ Interview, Border Management Official, Tanga, January 2018.
community level. As noted, local residents and officials report that they are being asked to identify irregular migrants and refugees living in their midst.

Local government leaders have been instructed to report illegal refugees to Immigration so that they may be taken back to camps.\textsuperscript{135}

Refugee movement is restricted to camps, which limits access to services. For urban refugees, fear of being reported means they are unaware of possibilities for protection.

We came as refugees, so we are supposed to be in camps. However, due to the risks to our physical protection, we decided to move from camps to the city where we feel safe from our own domestic enemies. While in the city, we live in fear of the government because our requests for asylum have not been granted to us, so anything can happen. Under this scenario, how then does one have legal protection?\textsuperscript{136}

The only process through which many refugees engage with stakeholders is in the issuance of refugee IDs, which have to be renewed regularly. For key informants, the current situation for refugees is primarily about refugee documentation, not about refugee protection. Some respondents spoke in favour of free and safe movement in theory but suggested limitations to subsequent entitlements. The caveats mentioned by interviewees reflect a general antipathy to rights that should be available to migrants. In the words of one local respondent:

Free and safe movement of migrants has to be there, but it should be restricted to specific areas in specific ways. For example, migrants should be allowed to travel for work, but they should not be allowed to acquire land, to avoid land conflicts. So many Tanzanians do not own a plot of land; it would not be fair for migrants to do so.\textsuperscript{137}

\textit{Fragmentation of knowledge} remains a key concern in Tanzania. Discussion of free and safe movement for refugees dominates conversations, crowding out considerations of rights that need to be extended to labour migrants. One risk of this divide is that the securitisation agenda will continue to supersede any discussion on the benefits of migration for development, leading to the marginalisation of all migrants.

\textit{Key challenges for policy-makers} seeking to address migrant participation in labour markets include: the largely irregular nature of migration and informal nature of employment; difficulty with identifying migrants since so many speak Swahili and thus blend in more easily with nationals; and the lack of statistics on hard-to-find

\textsuperscript{135} Participant 1, Local FGD, Dar es Salaam, January 2018.
\textsuperscript{136} Participant 2, Migrant FGD, Dar es Salaam, January 2018.
\textsuperscript{137} Participant 2, Local FGD, Dar es Salaam, January 2018.
or ‘invisible’ populations. It was frequently acknowledged that statistics on the number of work permits given to EAC labour migrants in the region do not reflect actual trends in employment. The EAC’s CMP does not account for irregular migration and is seen as a primary obstacle to obtaining reliable data to inform opportunities to advance arguments on the basis that migration is an opportunity for domestic development.

**Practices enhancing migrant protection**

Migrant protection in Tanzania can be strengthened if opportunities to access citizenship and legal labour migration opportunities are supported. This section delves into current openings that could be explored and re-emphasises initiatives led by CSOs and INGOs that can assist urban refugees and other migrants.

**Pathways to citizenship**

The Citizenship Act of 1995 provides conditions for non-Tanzanians to acquire citizenship in the country by birth or through naturalisation by applying in writing to the ministry (s.9). Extraordinary opportunities for acquiring citizenship have also been made available for refugees. In 2015, Tanzania offered citizenship to 200,000 Burundians in what amounted to the largest mass naturalisation of refugees in the country. Refugees had been given a choice between two durable solutions: repatriation to Burundi or local integration through naturalisation in Tanzania. Seventy-nine percent of the refugees responded favourably to the option to take on Tanzanian citizenship (Kuch, 2018). This process took many years to come to fruition – with original plans under development beginning in 2007 with the Tanzania Comprehensive Solution Strategy – showing the complexities of turning ‘a camp of refugees into a settlement of citizens’ (Kuch, 2018). Nonetheless, individuals in the camps now possess citizenship and can vote in national elections, have political representation and are allowed to move, as outlined in the Constitution of Tanzania.

Subsequent considerations that address needs for land and local governance of refugees-turned-citizens have since proved challenging. The objective of the 2016 Tanzania Strategy for Local Integration Program for the New Citizens was to develop a master plan around existing settlements, followed by the registration of land rights. The implementation of the policy remains unclear, as the government of Tanzania decided to halt the exercise at the same time that it withdrew from CRRF. Precarity looms large for migrant populations in Tanzania, even when citizenship has been secured.

138 [http://www.refworld.org/docid/3ae6b5734.html]
Opportunities for labour migration
There are legal pathways that allow migrants to participate in Tanzania’s labour market – on paper. On-the-ground realities do not always align with established frameworks, often because there is not enough information on appropriate procedures. For instance, legal migrants interviewed have intentions to stay in Tanzania and to eventually apply for permanent citizenship, which is possible once an individual has worked in the country legally for five to ten years. However, this small subset of individuals represents an exception; in general, there are insufficient data promoting legal migration, work opportunities and naturalisation. Government officials interviewed in Tanga report having data on dynamics and trends in migration in Tanzania but less (or no) data about how this affects protection, vis-à-vis labour market opportunities in particular.

An interview with the Ministry of Employment in June 2017 highlighted that labour migrants can have a positive impact on the local economy. The benefits discussed were threefold: first, stimulating competition in the labour market; second, transferring skills to the local populations; and third, generating entrepreneurship activities and ideas that are currently absent or underdeveloped in Tanzania. The same findings were echoed in this research among local populations who feel that migrants make valuable contributions to economic activity.

In order to realise these benefits, government offices in Tanzania need to harmonise their labour market regulations with those they have agreed to in the EAC’s CMP. This could begin at the university level, through satisfaction of conditions of the East African Qualification Framework, and move up through Mutual Recognition Agreements for professional trades such as engineering, architecture and law. These openings for migration protection can be explored further. ‘Harmonised university systems would help reduce the size of the informal sector since individuals with degrees would know their entitlements in countries where they are non-nationals,’ according to a representative of the Ministry of Labour. However, the government has expressed reservations about ceding to such systems that democratise the job market out of fear that non-nationals would crowd out local talent.

While the government de facto privileges nationals over non-nationals in the workforce, as stipulated through law and policy, state officials observe that in practice employers behave by their own logic. They often have a preference for hiring irregular foreign migrants who are paid lower wages. This practice, which reinforces the precarity of vulnerable migrants who need to generate incomes to survive, is a consequence of restrictive national policy. If the government brought the CMPs into force, migrants would have significant opportunities to secure protection.

139 Interview, Ministry of Labour and Employment, Dar es Salaam, 20 June 2017.
140 Ibid.
CSOs and (I)NGOs assisting urban refugees and other migrants

In Tanzania, refugees are rarely found outside of camp areas given the strict encampment policies. Yet, CSOs and NGOs speak of a growing number of urban refugees in a context where no law or policy acknowledges their presence. Although a minority, and in violation of existing policy, there are refugees living in urban areas. Actors such as the International Refugee Rights Initiative and Asylum Access have reported the insecurity and insufficient protection support to urban refugees, and advocate for exploring livelihood opportunities, creating referral pathways for the UNHCR and ensuring that individuals’ protection is monitored.

There is an existing base of CSOs and NGOs working with refugees specifically to improve their access to the asylum system. Asylum Access specialises in improving non-Tanzanians’ access to legal representation, providing free legal services to asylum-seekers and refugees who may need to go to court. They most often act in support of urban refugees. There is currently a gap between asylum procedures for those living in urban areas and those who are camp-based.

Key informants reported the creation of TAREMINET, a network of NGOs responding to the needs of refugees. TAREMINET operated as a ‘loose network in 2011’ and was officially registered in December 2016. It is made up of CSOs (such as Relief to Development Society and the Legal and Human Rights Center, among others) and INGOs (such as Asylum Access, the Christian Refugee Service, CARITAS and the International Rescue Committee). TAREMINET has a mobile clinic programme that serves marginalised poor urban populations, including refugees and other migrants. Although urban refugees have historically been a hard-to-reach population, such grassroots efforts allow more efficient outreach to identity and assist them. It is speculated that part of the reason for the increase in Burundian and Congolese urban refugees based in Dar es Salaam, from an estimated 10 000 to 20 000 individuals, is the increasing levels of support they have been able to access over the years.

One of the ambitions of TAREMINET is to convene a meeting with government in 2018. They aim to have the Ministry of Home Affairs agree to house a conversation on current refugee policy and laws among stakeholders. A civil society representative in Dar es Salaam envisions conversations to review all policies and laws to find opportunities for skilled refugees to participate in economic activities.\textsuperscript{141}

Bilateral initiatives are also in place, such as the Urban Refugee Self-Reliance project set up by the Christian World Services to help urban migrants build their capacity. The objective of the project is to enhance self-reliance through improved education, entrepreneurship activities and livelihood developments. The organisation also has projects called ‘Reflect’ in Kasulu and ‘Local Integration’ in Tabora, which contribute to supporting migrants’ self-reliance. These initiatives aim

\textsuperscript{141} Interview, Civil Society Representative, Dar es Salaam, January 2018.
to highlight what refugees and other migrants can do outside of camp-based models, which create and sustain dependency on aid.

Lived experiences of migration

Life in hiding: Dar es Salaam
Migrants consider that Tanzania has become less open to foreigners. Urban refugees in Dar es Salaam report not being able to send their children to school or access social services. Their vulnerabilities are compounded by the long processing times for visas, permits and other documentation. Refugees interviewed report that individuals forge documentation in order to access jobs and, when caught, have been arrested by police and on occasion tortured. When confronted with legal problems, they feel under-represented and incapable of retaining professional help. While refugees are seen to benefit from the support of dedicated UN agencies, migrants have to hire private lawyers to defend their interests. Not all can afford such costs.

Refugees interviewed for this case study spoke of the lack of real opportunity to apply for visas and work permits that can give them access to employment, despite the available legal framework. The procedures are complex – but they know that regulations are in place that can provide refugees a mechanism to apply for work permits. They referred in principle (not by name) to the Non-Citizens (Employment Regulation) Act of 2016. ‘There are very complicated procedures in obtaining visa and work permits for foreigners. We know we have a right to it but we do not know how to go about it,’ said a 40-year-old Rwandan man.  

In some cases then, refugees forfeit humanitarian assistance and protection support in the hope of securing access to livelihoods in urban areas. Upon arrival, they find themselves living alongside the urban poor and working in the informal economy alongside irregular migrant workers, with the constant fear of arrest and deportation.

Life in transit: Tanga region
Migrants who travel through border areas in search of a better life find low levels of protection as they are not able to produce what is expected of them, notably in terms of documentation. According to refugees from Burundi, who arrived through the border with Rwanda, the lack of documentation impeded their access to timely RSD and as a result impeded their access to protection.

I stayed for seven days at the border when I was fleeing from Burundi because I had no passport but a Burundian ID only. This was not accepted. The processes upon arrival are complicated.  

142 Participant 4, Migrant FGD, Dar es Salaam, January 2018.  
143 Participant 2, Migrant FGD, Dar es Salaam, January 2018.
The head of the permit section in Tanga links the stricter rules at the border with the diversification and the changing profiles of migrants. She cites specifically the rise in Ibos from Ethiopia travelling in transit, and the decrease in the Habeshi tribes from Kenya who are no longer moving into Tanzania due to the increased patrols around borders and strict laws. This poses a critical risk to migrants, who are pushed into irregularity. One government informant explained that they do not treat all migrants equally, with treatment weighed against the security situation in countries of origin. In other words, the EAC framework or the asylum process is not respected, as the treatment at the border will first depend on the nationality of the migrant.

We are surer of a Kenyan than the migrant from Somalia. The Somali migrant will have to go through a thoroughly investigative process.\(^{144}\)

Apart from the immigration office in Tanga, there is no other organisation working directly to support migrants’ rights. Responsibilities regarding Tanga’s migrants rest solely with the government, which receives information from national private actors but not NGOs or other types of public or non-state organisations. This is believed to be the same across other regions in Tanzania.

### Migrant voices

**Access to information, documentation and fear of deportation**

A majority of migrants interviewed had concerns about how to access protection because they are not adequately informed about their rights. This information gap is made worse when migrants are not legally residing in Tanzania, as they fear the repercussions of making themselves visible to authorities. Specifically, migrants interviewed worry about arrest, torture and deportation as a result of their irregular status. All migrants reported having known someone who was caught by authorities and threatened with being sent back by force.

We’re afraid of being deported by force at any time because some of us don’t have the legal documents to protect us. We have been pursuing those documents [residency permits that allow refugees to live out of camps] for a long time with no success.\(^ {145}\)

It is the government laws which can protect the rights of migrants; it is our responsibility to facilitate some of the areas to achieve protection. For

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144 Interview, Border Representative, Horororo, January 2018.
145 Participant 1, Migrant FGD, Dar es Salaam, January 2018
instance, one Ethiopian migrant was suspected of living in Tanzania illegally. He was chased by the police, got on a bike and drove away, before falling and getting injured. At the hospital, the doctor refused to accept him without proof of legal residence or PF3 [Police Form 3].

The dynamics of documentation and registration reinforce this vulnerability. Identification documents given to refugees and asylum-seekers are short-term IDs to be renewed monthly. The process of renewal is difficult for them. One female refugee explained that she has to go to the Ministry of Home Affairs to renew the ID monthly, and, when she goes, she is systematically treated as a new applicant. It would be easier, in her view, to be given a one-year permit to give her the recognition that she is being protected.

**Stigma and discrimination**

Migrants link the gap in procedures—between their registration in theory and administrative requirements in practice; between their eligibility to work legally in Tanzania and the reality of cumbersome administrative processes—with not being wanted in Tanzania.

Migrants report high levels of stigma and discrimination resulting from their challenging socio-economic situations. Psychosocial burdens and economic exclusion limit migrants’ ability and opportunity to find employment, part of the cycle of marginalisation that migrants in this study experience.

If people know that you are a migrant, they stigmatise you and feel uncomfortable about interacting with you.

This is the case even for those who have gained citizenship or for refugees residing legally. According to Lucy Hovil, an expert interviewed for this research, researchers have interviewed Rwandan refugees living in Uganda who felt caught between immense pressure to return to Rwanda and a host government that was pushing them to leave; former Burundian refugees struggling to exert their new citizenship in Tanzania; Congolese refugees whose legitimacy to belong was being questioned on account of their alleged ties to Rwanda; and Sudanese refugees from marginalised parts of the country who were being excluded.

**Regional approach to free and safe movement**

Migrants spoke of the need to harmonise Tanzania’s national migration management with the EAC’s protocols, suspecting that doing so would benefit both migrants and

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146 Interview, CSO Representative, Hororo, January 2018.
147 Participant 5, Migrant FGD, Dar es Salaam, January 2018.
149 Interview, Lucy Hovil, Kampala, March 2018.
the government. One migrant took his language skills as an example, illustrating how the focus on securing a decent job and standard of living should not be bound to one country:

I teach French and if policies allowed it, I could have gone to Kenya to work there. If policies are not changed and they don’t make it easier to move across borders, migrants will continue to have a difficult time accessing labour in Tanzania. Here, the labour policy doesn’t allow migrants to access employment in jobs that can be filled by Tanzanians.\(^{150}\)

**Local voices**

*Pervasive securitisation discourse and practice*

Concerns around security were also recorded amongst local populations, with the securitisation discourse trickling down to the local level. In FGDs with community members, internal and cross-border migration was conveyed as a threat:

When there is too much freedom of movement, we risk our security. We may not be able to monitor who comes in very well. It could be that evil people who do not wish for the good of our country can enter in the name of free movement. This threatens our protection.\(^{151}\)

Local officials spoke of an estimated 7,000 deportations recorded in 2017, and host community members recognised having witnessed the deportation threats imposed on migrants in Tanzania.\(^{152}\) Teachers report that government agencies threaten migrants with the prospect that they will have to return to a ‘home’ they may have never been to or do not feel safe in:

Migrants feel harassed. They are being told that they will be returned back to their countries, although they may have spent more than half of their lives here and may own property. Others have settled, their children were born in this country, and they behave like Tanzanians.\(^{153}\)

Teachers are no exception as the government outsources migration management to local actors. Teachers who were interviewed near the border noted increasing numbers of migrants enrolled in their classrooms, many of whom were born in Tanzania. Teachers explained that they have to report the number of migrant children in their classes. Immigration officials also visit schools to confirm reports. Besides the top-

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150 Participant from Burundi, Migrant FGD, Dar es Salaam, January 2018.
151 Participant, Local FGD, Dar es Salaam, January 2018.
152 Interview, Border Representative, Horohoro, January 2018.
153 Interview, School Teacher, Horohoro, January 2018.
down requirements imposed on them by national actors, teachers do not impose any restriction on migrant children attending school with local students.

They are treated the same as other Tanzanians. Since we have not received any instructions from the Ministry of Education, we treat them equally.\textsuperscript{154}

\textbf{Acceptance within communities}

In spite of the securitisation agenda, some still consider migrants as having a role in enhancing the creativity of communities and improving relations between countries, creating opportunities for positive economic competition and exchange of skills, goods and practices.

People from other countries will come to invest here and create more job opportunities, but also create competition for jobs that are good for the development of the country.\textsuperscript{155}

This perception is said to result in the acceptance of migrants as part of communities in Tanzania. Migrants were described as being welcome members of society who should have the right to participate in community-based initiatives.

Migrants participate in community-based initiatives. For example, they are involved in village community banks where they receive loans and use them for their business. This becomes possible because they are part of the community.\textsuperscript{156}

\textbf{Opportunities to improve migrant involvement in society}

Tanzanians interviewed expressed interest in learning how to support migrants while also benefiting themselves. This line of questioning is a positive starting point to discuss opportunities for social incorporation. Migrant contributions to the state (e.g. paying local fees, security fees) are appreciated; however, they are not always perceived to be contributing enough to the social fabric. Common solutions mentioned included community-based initiatives and micro-finance activities such as village community banks, which are seen as positive not only in terms of their contribution to household and community-level economic development, but also in terms of improved physical security. Local residents saw these initiatives as means to better integrate migrants into their communities. Further awareness raising and information sharing on village

\textsuperscript{154} Ibid.
\textsuperscript{155} Interview, Migration Investigation Officer, Ministry of Home Affairs, Dar es Salaam, January 2018.
\textsuperscript{156} Participant, Local FGD, Horohoro, January 2018.
community banks is required to maximise their contribution to the economic and social integration of migrants.

Other socially-oriented community-based initiatives were also discussed in FGDs, such as monthly cleaning campaigns initiated by the president of Tanzania on the last Saturday of every month. Migrants were seen as participating in these efforts to improve community living standards.

Migrants contribute fees for sanitation and disposal of waste products but also, they participate in security patrols in our streets.\(^{157}\)

**Conclusions**

In my opinion, I don’t think this free movement will ever work here because of our differences. We do not lead the same lifestyle. Whether in Ethiopia or Kenya, they discriminate against each other by their tribes. We do not. I have seen Kenyan policemen harassing people. I think we still have a long journey to go. There are things we can share and there are many we cannot share.\(^{158}\)

The policy of encampment in Tanzania and the decision to no longer collaborate on the Global Compact and the CRRF all reflect restrictions on the legal environment and possibilities for refugee protection. A focus on refugee registration, rather than refugee protection, dominates the policy environment. The attempts at registration are reinforced by subnational and central government collaborations aimed at identifying and registering all migrants in the country. This focus on registration and identification, rather than on protection, is leading to the production of irregularity in practice and to vulnerable populations becoming increasingly hidden and at risk. The structure from the village level working upwards to the immigration ministry shows a complex array of actors in the process.

Across urban and border areas, the lack of recognition that migration can contribute to development hinders the benefits of safe and free movement in Tanzania. It also limits the implementation of regional and national laws and commitments. Stakeholders interviewed for this project recognise in both instances the importance of working on improving access to documentation (permits), and regularising irregular migration in order to maximise benefits for host and migrant communities. To address the gaps identified in this research, this report concludes on a set of recommendations.

\(^{157}\) Participant, Local FGD, Horororo, January 2018.
\(^{158}\) Interview, Police Officer, Horororo, January 2018.
Recommendations

At the national level

The government can develop pathways for refugees and other migrants to contribute to the Tanzanian economy and society through several measures to:

- **Domesticate regional and international laws** (e.g. EAC’s CMP and articles on freedom of movement and right to work in the UNHCR’s 1951 Refugee Convention), and work with local actors to ensure implementation of the frameworks.

- **Allow refugees in protracted camp-based settings to settle in urban areas**, and support local authorities, CSOs and (I)NGOs to facilitate that transition.

- **Improve access to documentation** so that migrants have increased ability to seek protection and can make financial contributions to the state.

- **Simplify the process of obtaining documentation** for refugees by waiving the monthly renewal requirements in favour of annual passes.

- **Remove visa and work permit fees** for all citizens of EAC member states, reciprocating policies and practices that are already in place in Uganda, Kenya and Rwanda.

- **Use funding from the World Bank’s IDA18 scheme to recommit to developing a more liberal migration regime**, similar to what Tanzania had planned prior its withdrawal from being a pilot country under CRRF.

CSOs and (I)NGOs can make themselves known to national stakeholders and actively advocate for more progressive rights-based legal and policy frameworks and practices for migrant populations. These actors can:

- **Join and collectivise under TAREMINET to advocate on refugee and other migrant issues** across the country. TAREMINET should continue to develop an agenda that advances the rights of all migrants, moving beyond its predominantly refugee-focused approach, as has historically been the case.

- **Organise and participate in discussions on the Social Security Portability Bill** to create financial inclusion opportunities for migrants in line with those being advocated for by regional and national trade union representatives.

- **Collect data on urban refugees and labour migrants** – guaranteeing anonymity to respondents – in order to fill the current information gap. Identify protection challenges that have not been addressed and assess whether it is possible to develop public policies and programmes that can lead to better outcomes for migrants. In
situations where it is productive and safe to publicise findings, share data to bring to the attention of the government and the public.

- Lobby for the creation of a refugee unit within the National Human Rights Commission.

At the municipal level

Local authorities can work to improve migrants’ access to protection opportunities – including access to livelihoods, public services and mobility – in order to facilitate success stories at the community level. These successes can be communicated to national-level actors to improve the overarching agenda for a more progressive migration regime in Tanzania. Police, border patrol, immigration officers, public administrators and other government authorities at the local level should:

- Organise meetings with CSOs and local NGOs to hear their concerns about migration protection practices and solicit recommendations to improve social and economic cohesion programming between local and migrant populations.
- Establish and identify referral mechanisms to help migrants seek protection.
- Disseminate referral information in relevant migrant information hubs and with community stakeholders for onward distribution.
- Work closely with the UNHCR to refer asylum cases and to implement the Refugee Act.
- Engage local politicians and community leaders in the implementation of the Refugee Act.
- Engage with police officers and border officials on a more routine basis in legal reviews, trainings and referral processes.
- CSOs and (I)NGOs should continue advocating for and filling gaps in migrant protection, while also expanding their efforts to underserved populations and underdeveloped practices.
- Local CSOs and (I)NGOs should:
  - Train officials and magistrates in understanding the applicability of specific laws in various contexts;
  - Train border officials on the content of national and regional legislation on safe and free movement of migrants, e.g. on recognising the use of e-passports or accepting documentation beyond passports;
  - Support migrants in filling in work permit paperwork and understanding the laws, with training and sensitisation sessions organised in migrant communities;
  - Support refugees’ benefit from the free work permit for refugees by finding entry points in existing practice;
  - Involve media in setting up awareness-raising activities targeting the
social disconnect, stigma and discrimination that separate host communities and migrants in Tanzania;

- Identify opportunities for taxation, legal documentation, education and health for migrants and communicate with relevant populations; and

- Work with academia and researchers to build the evidence base on the benefits of migration for local economic development and social cohesion.

References


Kuch, A. 2018. ‘Lessons from Tanzania’s Historic Bid to Turn Refugees to Citizens,’ Refugees Deeply, 22 February.


Samuel Hall. 2018. Understanding Intra-Regional Labour Migration in the EAC, ongoing research funded by the East Africa Research Fund (EARF).
Introduction

The table that follows aims to identify and analyse legal and policy frameworks potentially facilitating migrants’ rights and welfare or presenting implicit or acute threats to them. It aims to analyse laws and policies explicitly labelled as migration related, along with other legislation or policies that may have an impact on migrants’ rights. This may include, among others, trafficking and smuggling; trade; discrimination (in access to labour, housing, municipal services, etc.); access to legal protections; as well as detention. Since the focus of this project is primarily those moving ‘voluntarily’, it only covers refugee legislation very briefly, recognising that conceptually (and legally) voluntary and forced migrants are often indistinguishable.

Limitations

Due to limitations of time and access, this table offers an overview of the policies and laws governing movement in Africa; it is neither a comprehensive list nor a detailed analysis of those policies and laws. Research for this table relied primarily on secondary sources, and only considered English-language sources. While a new wave of migration policies is reportedly being drafted across the African continent (often with assistance from IOM), in many cases draft policies remain unavailable to researchers. This limits the research on future directions of and changes to migration policies. This research is also only limited to an examination of current laws, specifically at the national level. The situation is slightly different for international treaties and protocols, since those may be current but may not be applicable in a national context until they are given effect (i.e. signed and/or ratified) by a current law (or other mechanism).

The table incorporates policies relevant to movements within East Africa. It is disaggregated into an analysis of global, regional and national policies. It is limited, therefore, to research on the AU and the EAC, and to Kenya, Tanzania, Rwanda and Uganda.
Structure

The table is divided into four subsections. The sections consider, in turn, global instruments, AU policies and protocols, and finally the regional and national policies and laws pertaining to migration (including, where possible, an analysis of subnational and local policies and laws) in the EAC.

Section I: Global instruments

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Primary applicability</th>
<th>Signing/Ratification</th>
<th>Analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>ILO Convention (C097) Concerning Migration for Employment (Revised 1949) (Entry into force: 22 Jan. 1952)</td>
<td>Migrant workers</td>
<td>Kenya and Malawi (both, with reservations).</td>
<td>In force, but subject to ratification and reservations of national states. There have been 49 ratifications. Neither this nor the supplementary provisions (below) are well-accepted standards of international law.</td>
</tr>
<tr>
<td>Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975</td>
<td>Migrant workers</td>
<td>Kenya, only.</td>
<td>In force, but subject to ratification and reservations of national states. There have only been 23 ratifications.</td>
</tr>
<tr>
<td>1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</td>
<td>Migrant workers</td>
<td>Only Lesotho, Madagascar, Mozambique and Seychelles.</td>
<td>In force, but subject to ratification and reservations of national states. There have been 51 ratifications.</td>
</tr>
<tr>
<td>1951 Convention Relating to the Status of Refugees (as amended by the 1967 Protocol Relating to the Status of Refugees)</td>
<td>Refugees</td>
<td></td>
<td>In force, but subject to ratification and reservations of national states. Ratified by 145 state parties and is well accepted as a statement of international law.</td>
</tr>
<tr>
<td>1989 Convention on the Rights of the Child</td>
<td>Children (including migrant children and children of migrants)</td>
<td>All the study countries have signed and ratified the convention.</td>
<td>In force; has been ratified by all of the study countries. This is almost universally ratified and is well accepted as part of international human rights law.</td>
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</tbody>
</table>

### Section II: AU instruments and policies

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Signing/Ratification</th>
<th>Analysis</th>
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</thead>
</table>
| OAU Convention Governing Specific Aspects of Refugee Problems in Africa 1969[^160] | All the study countries have signed and ratified the treaty[^161] | In force: 1974  
The 1969 OAU Convention includes three interesting variations, compared to the 1951 Refugee Convention. i) It expands the definition of refugee to include those fleeing their country of nationality or residence ‘owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality’ (Art. I); ii) exhorts states to provide asylum, by using ‘best endeavours’, and subject to national legislation (Art. II); and iii) prohibits ‘subversive activities’ by refugees (Art. III). It also includes provisions for non-refoulement, and voluntary repatriation (Arts. II, V).  
In practice, states have used a security lens to manage and control refugee movement. Whatever the legal protections under the Convention and national laws, in practice these protections have been subject to the overriding security imperatives articulated by states.[^162] |
| Treaty establishing the African Economic Community 1991 (Abuja Treaty)[^163] | All the study countries have signed and ratified the treaty[^164] | In force: 1994  
The Abuja Treaty encourages AU member states to adopt employment policies that will eventually allow free movement within the planned African Economic Community to be completed by 2028 (Art. 6, para. 2(e)(iii)). Further, the Treaty calls on AU members to establish the right of residence and establishment for any citizen of a member state (Art. 4, para. 2(i)). The Abuja Treaty envisages the creation of an African Common Market (this was to have been done by 2017, and therefore highly unlikely) which will facilitate the movement of workers from labour surplus to countries with a shortage of workers (Arts. 6, 71).  
In practice, RECs have made varied progress in achieving free movement even within the RECs, let alone across Africa. Movement remains subject to national laws. EAC has made greater progress, permitting travellers carrying the EAC passport multiple visits within six months. SADC countries (for the most part) extend visitors from outside and within SADC the same rights.[^165] |

[^165]: Fioramonti and Nshimbi (2016).
### Instrument

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Signing/Ratification</th>
<th>Analysis</th>
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</thead>
<tbody>
<tr>
<td>Migration Policy Framework for Africa 2006[^166]</td>
<td>N/A</td>
<td>Not a binding instrument</td>
</tr>
<tr>
<td></td>
<td></td>
<td>This policy document, adopted by the Executive Council of the AU along with the African Common Position on Migration and Development 2006, articulates the AU's overarching approach to migration. Broadly, it emphasises the need for a 'comprehensive migration policy strategy for Africa', the need to keep working towards free movement of people across Africa, and points to the importance of 'migration management' – all aimed at harnessing migration for national and regional development. It also includes provisions for strengthening border management, and makes clear that the regulation of migration falls squarely within national competence.[^167]</td>
</tr>
<tr>
<td>African Common Position on Migration and Development 2006[^168]</td>
<td>N/A</td>
<td>Not a binding instrument</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Similar to the Migration Policy Framework for Africa, this policy document identifies thematic areas for action on migration in Africa, so as to harness migration for development. It places a great deal of emphasis on the control of migration and asks states to strengthen borders, collect better data on migration, combat smuggling and trafficking. In short, it aims to: 'Improve the management of migration flows by finding a balance between effective security for legal immigrants, freedom of the legal movement of persons and the humanitarian obligation towards those who need protection' (para. 5.2).</td>
</tr>
<tr>
<td>AU Labour Migration Governance for Development and Integration in Africa[^169]</td>
<td>N/A</td>
<td>Not a binding instrument</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The JLMP is a four-year AU-led initiative for regional integration and development in Africa, co-sponsored by the AU Commission, the International Labour Organization, the IOM and the UN Economic Commission for Africa. The JLMP mainly aims to strengthen ‘the effective governance of labour migration’ and promote ‘decent work’ against the background of ‘regional integration and inclusive development in Africa’. The goals and objectives of this programme are ostensibly consistent with Arts. 6 and 71 of the Abuja Treaty and the various AU goals seeking continental free movement and the exchange of labour between member countries. In reality, as with many other such initiatives, the JLMP appears to promote migration management.</td>
</tr>
</tbody>
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[^167]: See also Fioramonti and Nshimbi (2016:15).


[^169]: Also known as the Joint Labour Migration Programme (JLMP) for Africa.
### Others

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Signing/Ratification</th>
<th>Analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Others</td>
<td>N/A</td>
<td>None of these are binding instruments</td>
</tr>
</tbody>
</table>

Many non-binding AU initiatives and declarations purport to govern/promote/manage migration. Some are listed below:

i) 2004 AU Plan of Action on Employment Promotion and Poverty Alleviation aiming to facilitate labour migration in Africa;

ii) 2008 AU Social Policy Framework that recommended regional integration and collaboration of social security schemes in Africa to ensure benefits of labour circulation;

iii) 2012 AU Plan of Action on Boosting Intra African Trade recognising the key role of free movement of people and labour migration regulation;

iv) the 9th Ordinary Session of the AU Labour and Social Affairs Commission (April 2013) identified regional labour migration as an important factor in sustainable development and regional integration and also adopted the Youth and Women Employment Pact including ‘Promotion of regional and subregional labour mobility’.

The Pact called for an AU and RECs Labour Migration Plan;

v) 2014–2017 AUC Strategic Plan pursues the strategy to ‘Promote labour migration to support cross border investment and to fill the skills gap’;

vi) the 24th AU Assembly adopted the AU Declaration and Plan of Action on Employment, Poverty Eradication and Inclusive Development, which prioritised labour migration governance for regional integration as a key priority area of action in Africa. The summit also endorsed the JLMP as the continental programme to foster regular migration in Africa (January 2015);

vii) the 25th AU Assembly adopted the Declaration on Migration (June 2015), which reiterates skills mobility and the continental free movement as core priorities for Africa.\(^{170}\)

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# Section III: EAC instruments and national laws and policies

## Part A: EAC instruments

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Signing/Ratification</th>
<th>Analysis</th>
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<tbody>
<tr>
<td><strong>EAC instruments</strong>&lt;sup&gt;171&lt;/sup&gt;</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 1999 Treaty for the Establishment of the EAC<sup>172</sup> | All study states. | In force: 1999  
Art. 104 contains provisions for the free movement of persons, labour and services, as well as right of ‘establishment and residence’. In Art. 76, the states agree to establish a common market, with ‘free movement of labour, goods, services, capital, and the right of establishment’. Note that ‘residence’ is provided for in Art. 104, but not Art. 76.  
Art. 104 includes the following:  
• The state parties agree to conclude a Protocol on the Free Movement of Persons, Labour, Services and Right of Establishment and Residence. This has not been concluded yet.  
• Provision for easing and standardising travel and border management procedures, including travel documents, creation of common employment policies, reciprocal opening of border posts and strengthening of labour institutions (for instance, training and productivity centres, and enhancing the activities of employers and workers’ organisations). | |
Part D provides for the following:  
• Free movement of EAC member country citizens (a) subject to limitations imposed by member host states on grounds of public health, public policy and public security (Art. 7(5)), and (b) providing them protections in accordance with national laws (Art. 7(3)).  
• Movement of refugees between EAC states is to be governed by the provisions of international conventions (Art. 7(8)).  
• The establishment of a common travel document.  
• Art. 10 specifically guarantees the free movement of workers between EAC countries. EAC states are required to ensure that workers from other EAC countries are not discriminated against in respect of employment, remuneration and conditions of work. | |

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<sup>171</sup> As of April 2016, the six members of the EAC are: Burundi, Kenya, Uganda, Rwanda, South Sudan and Tanzania. Of these, Kenya, Rwanda, Tanzania and Uganda are of interest to us. After a period of dormancy, the EAC was revived in 2000.


• Art. 10(3)(e) and (f) specify that workers from other EAC countries are entitled to i) enjoy freedom of association and collective bargaining as per the laws of the host EAC state, and ii) enjoy the rights and benefits of social security. The same rights are to be extended to the spouse and child of the worker. Travel of dependants of workers is to be permitted in accordance with the laws of the host state.
• Art 10(9) excludes the application of national laws of a state where those laws are to be applied to exclude the employment of another EAC state worker.
• Art. 10(10) disapplies these provisions from applying to public (i.e. government) employment in another EAC state.
• Art 10(11) subjects movement to limitations imposed by member host states on grounds of public health, public policy and public security.
• Art. 11 enjoins member states to harmonise recognition of academic and professional standards, and harmonise accreditation of educational and training institutions.
• In Art. 12, member states undertake to harmonise labour and social security laws, programmes and policies to facilitate movement.
• In Part E (Art. 13), states guarantee the right of migrants from other EAC states to pursue self-employment and set up businesses.
• Residence of other EAC citizens is guaranteed under Art. 14.
• The rights of residence and establishment are subject to limitations imposed by the host partner state on grounds of public policy, public security or public health (Arts. 13(10) and 14(4)).
• Art. 15 states that land use is to be governed by host state laws.

In practice, the EAC passport was launched in 1999 and is presently operational for EAC citizens to travel freely in the EAC region for a period of six months.\(^{174}\) After ratifying the CMP, Kenya and Rwanda abolished requirements for work permits for citizens of member states. Kenya, Rwanda and Uganda have been allowing their respective citizens to travel across borders by using only their respective national identity cards. These three countries also issue a single tourist visa, creating a subregion for international travelling.

A single immigration entry or departure card eases the procedures for issuing entry and work permits in the EAC.\(^{175}\)

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# Part B: National laws and policies of selected EAC member countries

<table>
<thead>
<tr>
<th>Law/Policy</th>
<th>Applicability (Sector/Administrative level)</th>
<th>Analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitution of Tanzania 1977(^{176})</td>
<td>National legislation.</td>
<td>The Constitution of Tanzania makes a distinction between ‘persons’ and ‘citizens’. Some rights are only made accessible to citizens; others are available for all persons, which presumably includes migrants (though this does not appear to have been specifically adjudicated). All persons have the right to access education (Art. 11). All persons are entitled to equal protection of the law, without any discrimination on the basis of nationality (Art. 13(4) and 13(5)). No person may be detained or imprisoned except in accordance with existing law (Art. 15). The right of freedom of movement within Tanzania is only accorded to citizens (Art. 17).</td>
</tr>
<tr>
<td>Tanzania Immigration Act 1995,(^{177}) read with Immigration (Amendment) Act 2015(^{178})</td>
<td>Immigration control. National legislation note, however, that Tanzania is a federation and Tanzanian parliament is competent to legislate on specific matters only for the mainland, and not for Zanzibar.(^{179}) This Act applies to both Tanzania and Zanzibar.</td>
<td>The Immigration Act, 1995, as amended in 2017, contains provisions setting out the wide-ranging powers of immigration authorities in Tanzania as well as the various bureaucratic arrangements which govern immigration in Tanzania. Immigration authorities are entitled to conduct searches as well as make arrests (without warrants) on the basis of ‘reasonable cause’ (s.17). Note that the numbering refers to the Act, as amended. This is the same as s.9 in the unamended law. S.23 (s.10 in the unamended Act) defines the category of a ‘prohibited migrant’. This includes destitute persons, persons suffering from mental disorders, persons with diseases which may pose a danger to the wider Tanzanian populace, those engaged in prostitution or dealing in dangerous drugs, etc. Dependents of prohibited persons are also to be considered prohibited immigrants. If, however, a person who would otherwise be a prohibited immigrant holds a valid permit, then the provisions of s.23 do not apply to them.</td>
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179 The Republic of Tanzania includes two territories, mainland Tanzania and Zanzibar, tied by an arrangement akin to a federation (The Constitution of the United Republic of Tanzania, s.4). The government of the United Republic of Tanzania and the government of Zanzibar share legislative jurisdiction on various matters, which they divide into Union matters and non-Union matters (Ibid.). The mainland Tanzania government is authorised to exercise legislative jurisdiction over all Union matters and all non-Union matters that concern the mainland (Ibid. ss.34, 64). The government of Zanzibar is authorised to legislate on non-Union matters affecting Zanzibar (Ibid. s.64). Labour-related issues are considered to be non-Union matters (Ibid. s.4). See Goitom (2015).
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<td><strong>TANGANIA</strong></td>
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<td>S.27 (s.14 in the unamended Act) provides the process by which persons may be deported. This includes any person whose continued presence in Tanzania would pose a threat to ‘peace’ and ‘good order’. Immigrants to be deported are to be held in detention in the period between the signing of the deportation order and the actual deportation. The Act also specifies the classes of permits which may be used to enter Tanzania (Classes A, B or C as well as the residence permit). Most of these permits allow for the imposition of conditions by authorities, such as area of residence, occupation, etc.</td>
</tr>
<tr>
<td>Tanzania Citizenship Act 1995</td>
<td>Citizenship law, national legislation, applicable nationwide.</td>
<td>This Act provides for the various (very restrictive) conditions by which a person may acquire citizenship of Tanzania. A person acquires citizenship by birth if they are born in Tanzania, unless neither parent is or was a citizen at the time of birth. S.9 states that a non-citizen may become a citizen by naturalisation by applying in writing to the minister. Other provisions of the legislation are concerned with cessation of citizenship, etc.</td>
</tr>
<tr>
<td>Refugees Act 1998</td>
<td>Law on refugees, national, applicable nationwide.</td>
<td>This replaced the Refugee (Control) Act of 1966. It uses the expanded definition of refugee under the OAU Refugee Convention (s.4(1)) (see s.11). S.4 also contains the provisions which disqualify a person from claiming refugee status (having committed a war crime, a crime against humanity, having acted in a manner contrary to the objectives of the OAU Refugee Convention, etc.). The Act is overseen by an appointed Director of Refugee Services (s.5). Application for refugee status has to be made by a person within seven days of entering the country. Illegal entry into a country does not disqualify a person from claiming asylum, nor does it result (automatically) in the categorisation of the person as a ‘prohibited immigrant’ (s.9(3)) – see the section on the Immigration Act for a discussion of ‘prohibited immigrant’. Refugees or asylum-seekers who receive a permit may remain in Tanzania (s.12) but may be required to reside in a designated area (s.17).</td>
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182 Generally, see Milner (2013).
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<td>TANZANIA</td>
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<td>Every refugee child is entitled to primary education in accordance with the National Education Act 1978 and every refugee adult who desires to participate in adult education is entitled to do so in accordance with the Adult Education Act (s.31). Refugees may also obtain work permits (s.32). Legislation in Tanzania does not expressly provide for access to health services for migrants (including refugees).</td>
</tr>
<tr>
<td>National Education Act 1978&lt;sup&gt;183&lt;/sup&gt;</td>
<td>Education – national legislation, applicable nationwide.</td>
<td>S.56 of the National Education Act specifies that every citizen is entitled to receive such category, nature and level of national education as per his or her ability. In terms of admission, schools are entitled to privilege citizens over others, but no person is to be denied an opportunity to obtain any category, nature or level of national education for reasons of race, religion or political or ideological beliefs S.56(2).</td>
</tr>
<tr>
<td>Anti-Trafficking in Persons Act 2008&lt;sup&gt;184&lt;/sup&gt;</td>
<td>Anti-trafficking national legislation, applicable nationwide.</td>
<td>This document closely tracks the UN Palermo protocol on anti-trafficking. It criminalises all forms of trafficking and calls for one or both of the following: a prison sentence of one to 20 years or a fine of five to 150 million shillings, depending on the particular trafficking offence (s.4(3)). The first section of the Act prohibits coercing, recruiting or transporting a person by any means ‘for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage’ (s.4(1)(f)). The Act lists ‘severe trafficking’ offences: trafficking involving children or disabled victims, adoption for sexual or labour exploitation, and offences committed by crime syndicates, groups of two or more persons, religious leaders or other authority figures (s.6(2)). Anyone who ‘buys or engages the services of trafficked persons for prostitution’ must either pay a fine of one to 30 million shillings or serve a prison term of 12 months to seven years, or both (s.8). The Act allows judges to impose heavier penalties for second-time or multiple trafficking offenders (s.13).</td>
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<sup>183</sup> [http://www.unesco.org/education/edurights/media/docs/873ae01bc28cf449895950c7cac2a419d3ede5fd.pdf](http://www.unesco.org/education/edurights/media/docs/873ae01bc28cf449895950c7cac2a419d3ede5fd.pdf). Accessed 19 December 2017.
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<td><strong>TANZANIA</strong></td>
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<tr>
<td>Non-citizens (Employment Regulation) Act 2015(^{185})</td>
<td>Employment control legislation, for Tanzanian mainland only.</td>
<td>This is an extremely restrictive Act, which is intended to regulate the conditions under which non-citizens may be employed in Tanzania. This Act replaced the regime of CTAs (Carrying on Temporary Assignment), which was outside the purview of the Immigration Act, but which had been used in the past by foreign workers on temporary assignment in Tanzania. This Act requires effective authorisation from two different sources: the Ministry of Labour and Employment (for the work permit) and the Ministry of Home Affairs (for the residence permit).(^{186}) It supplements the existing National Employment Promotion Service Act 2002. Work permits are now classified into two types – A, for investors and self-employed non-citizens, and B, for those not entitled to type A permits. A work permit is mandatory for any non-citizen to take up employment of any kind in Tanzania (s.9). This needs to be applied for by the employer (s.10), who needs to pay the required fee and also have a ‘succession plan’ – that is, a plan to demonstrate how the work being done by the non-national will be transferred to a Tanzanian citizen within a specified number of years (s.7). Non-compliance may lead to cancellation of work permits by the labour commissioner (s.14). The legislation criminalises the hiring of non-citizens who do not possess a valid work permit or a certificate of exemption (Non-Citizens (Employment Regulation) Act, s.9.) It also bans non-citizens who do not have work permits or exemption certificates from ‘engaging in any occupation for reward, profit or non-profit’ (Ibid.). Violation of these bans is an offence punishable on conviction by a fine of at least Tzs 10 million (about US$ 5 136), at least two years in prison, or both.</td>
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\(^{186}\) Kagasheki (2016).
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<td><strong>KENYA</strong></td>
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<tr>
<td>Constitution of Kenya 2010</td>
<td>National legislation.</td>
<td>Ch. 3 of the Constitution deals with citizenship issues. It describes the rules for acquisition and retention of citizenship, the rights of citizens to passports and other documents, and the conditions under which citizenship may be revoked. The Constitution allows for dual citizenship, and gives parliament the ability to enact legislation on citizenship that: i) prescribes procedures by which a person may become a citizen; ii) governs entry into and residence in Kenya; iii) provides for the status of permanent residents; iv) provides for voluntary renunciation of citizenship; v) prescribes procedures for revocation and citizenship; vi) prescribes the duties and rights of citizens; and vii) generally gives effect to the provisions of the chapter on citizenship. The Bill of Rights (see in particular Ch. IV, Part 2) embedded in the Constitution provides for freedom of movement, whereby every person has the right to freedom of movement and the right to leave Kenya, and every citizen has the right to enter, remain in and reside anywhere in Kenya (Art. 39). The Bill of Rights also provides for economic and social rights for every person (see Art. 43), inter alia, the right to the highest attainable standard of health; to healthcare services including reproductive healthcare; to accessible and adequate housing with reasonable standards of sanitation; to be free from hunger and to have adequate food of acceptable quality; to clean and safe water in adequate quantities; to social security; and to education. Of particular relevance to migrant workers is Art. 41, which guarantees to all persons a right to fair labour practices and guarantees to all workers fair remuneration, reasonable working conditions, the right to strike and form/join/participate in trade unions.</td>
</tr>
<tr>
<td>The Refugees Act (No. 13 of 2006), read with the Refugee (Reception, Registration and Adjudication) Regulations 2009, as further amended by the Security Laws (Amendment) Act 2014</td>
<td>Refugees, national legislation. A Refugee Bill to replace the 2006 Act has been making its way through parliament.</td>
<td>This Act adopts the broader definition from the OAU Refugee Convention in s.3. It draws a distinction between <em>prima facie</em> and statutory refugees, and an entire class of persons may be categorised as <em>prima facie</em> refugees. Ss.4 and 5 set out the circumstances in which a person may either be disqualified from being a refugee or cease to be a refugee. The Refugees Act also puts in place the administrative superstructure that regulates refugee affairs in Kenya.</td>
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188 See also IOM (2015).
ANNEX: EAC INSTRUMENTS AND NATIONAL LAWS AND POLICIES

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<td>KENYA</td>
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<td>Families of those who have been granted refugee status are entitled to remain in Kenya for as long as the refugee has the right to do so (s.15)</td>
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<td>Unlike many other countries in the region, Kenya follows an encampment policy (s.16(b)), and specific areas may be designated by the authorities as either transit centres or refugee camps.</td>
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<td>Ss.19 and 20 allow for the withdrawal of refugee status from a person (in the judgement of the commissioner) on grounds of national security and others.</td>
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<td>Of note, s.11 of the Act provides that a decision on refugee applications is to be made within 90 days, and that the applicant is to be informed in writing of the decision within 14 days of the decision being made.</td>
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<td>S.16 specifies that the minister responsible for refugee affairs may, in consultation with host communities, designate places and areas in Kenya to be transit centres and refugee camps, and that such areas are to be maintained and managed in an environmentally sound manner. Further, this section states that refugees and their family members are subject to the same restrictions as non-citizens in terms of wage-earning employment.</td>
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<td>Researchers have raised concerns about the conflict between refugee status and the ability to work, with the government of Kenya recently stating that it would be unconstitutional to allow refugees to work in the country.</td>
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<tr>
<td>The Counter-Trafficking in Persons Act 2010191</td>
<td>Anti-trafficking, national legislation.</td>
<td>Enacted to comply with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.</td>
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<td>S.3 defines the crime of trafficking as one where a person recruits, transports, transfers, harbours or receives another person for the purpose of exploitation by means of – (a) threat or use of force or other forms of coercion; (b) abduction; (c) fraud; (d) deception; (e) abuse of power or of position of vulnerability; (f) giving payments or benefits to obtain the consent of the victim of trafficking in persons; or (g) giving or receiving payments or benefits to obtain the consent of a person having control over another person.</td>
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<td>Abetment of trafficking, whether by knowingly allowing the trafficker to use property (s.5) or facilitation of entry or exit into the country, is also a crime (s.7).</td>
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190 See Norwegian Refugee Council (2017).
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<td>KENYA</td>
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<td>S.14 provides that the victim of trafficking will not be criminally liable for any offence related to being in Kenya illegally or for any criminal act that was a direct result of being trafficked. The other provisions in the Act relate to restitution for the victim, the conduct of trial for such that the rights of the victim are protected, and the creation of a series of administrative bodies meant to deal with issues arising under the Act.</td>
</tr>
<tr>
<td>The Citizenship and Immigration Act (No. 11 of 2011) as implemented by the Citizenship and Immigration Regulations 2012</td>
<td>Citizenship law, national legislation.</td>
<td>This Act regulates citizenship, establishes the visa regime and border control, including work permits and passes. Together they specify the different kinds of visas/permits, etc. which can be used to enter Kenya. The Act and regulations address the administration of citizenship and immigration matters, and matters related to citizenship, rights and duties of citizens, passports and travel documents, immigration controls, management of foreign nationals, and management of immigration-related records. Of note, the Act brings in measures that allow the government of Kenya to restrict entry or movements of certain foreign nationals in times of war or emergency. The regulations classify entry and work permits, allow for inspections of ‘places of employment, business, training and education, or residence for the purposes of verifying information contained in the applications, monitoring compliance with the terms and conditions contained in permits or passes issued to the owners, residents or persons-in-charge of the premises’, and limits eligibility for a Class K residence permit to those who have an assured annual income of not less than USD 24 000 a year.</td>
</tr>
<tr>
<td>The Kenya Citizens and Foreign Nationals Management Service Act 2011</td>
<td>Data collection, migration management – national legislation.</td>
<td>Establishes the Kenya Citizens and Foreign Nationals Management Service; provides for the creation and maintenance of a national population register; provides for the administration of laws relating to births, deaths, identification and registration.</td>
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<td><strong>KENYA</strong></td>
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<tr>
<td>The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (No. 56 of 2012)(^{195})</td>
<td>Internally displaced persons (IDPs), national legislation.</td>
<td>This specifically deals with the issue of IDPs. The Act establishes the following offences related to internal displacement: causing arbitrary displacement (as defined within the Act); impeding access to IDPs or the work of humanitarian personnel; causing harm to IDPs or humanitarian personnel; obstructing provision of humanitarian assistance to IDPs; stealing, destroying or misusing humanitarian supplies intended for IDPs; misrepresenting oneself as an IDP or providing false information during verification or profiling; and establishing an institution or camp of persons pretending to be IDPs.</td>
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| The Security Laws (Amendment) Act 2014\(^{196}\)                          | Anti-terrorism law, national legislation.    | The Security Laws (Amendment) Act makes a few changes to the Refugees Act 2014. Some of the more important changes are:  
(a) Every person who has applied for recognition of their status as a refugee and every member of their family is required to remain in a designated refugee camp until the processing of their status is completed (s.12(3) of the Refugees Act, as amended). 
(b) No refugee or asylum-seeker is to leave the designated refugee camp without the permission of a refugee camp officer (Amendment to s.14 of the Refugees Act). 
(c) A new section is added which limits the number of refugees and asylum-seekers permitted to stay in Kenya to 150 000. The National Assembly is given the authority to change this number for a renewable period of not more than six months (s.16(A)(1)). This provision was struck down by the High Court of Kenya and has since been appealed by the government. |
<p>| <em>Kenya National Commission on Human Rights &amp; another v. Attorney General &amp; 3 others</em>(^{197}) | Case law.                                   | The judicial decision which held that the order to close Dadaab prisoner camp was unconstitutional.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |</p>
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<td><strong>KENYA</strong></td>
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<tr>
<td>Policies</td>
<td>Draft or not in force.</td>
<td>A number of unenforceable policies in Kenya deal with migration. Very broadly, they approach migration from outside Kenya through a security lens and seek to capitalise on the Kenyan diaspora and protect Kenyan workers working in other countries. IOM (2015) contains a comprehensive listing of these policies, but the most important are: • Draft Kenya National Migration Policy (originally prepared in 2009 but an advance draft appears to have been put together under the auspices of the IOM); • Kenya National Labour Migration Policy (this appears to have been adopted, but deals primarily with Kenyans working outside the country – dealing with their protection, return and reintegration, etc.); • Draft National Policy on Internal Displacement.</td>
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<tr>
<td>Education</td>
<td>Included in multiple legislations.</td>
<td>According to Art. 43(1)(f) of the new Constitution of 2010, ‘Every person has [...] the right to education.’ Art. 53(1)(b) adds that, ‘Every child has the right [...] to free and compulsory education.’ The Basic Education Act (No. 14 of 2013) was enacted to ‘give effect to Article 53 of the Constitution and other enabling provisions; to promote and regulate free and compulsory basic education’. The Children Act (No. 8 of 2001), revised in 2010, requires ‘the government to undertake all the necessary steps to make available free basic education to every child, which shall be compulsory in accordance with the Convention on the Rights of the Child’. Art. 7 recognises the right to education as follows: ‘(1) Every child shall be entitled to education the provision of which shall be the responsibility of the Government and the parents. (2) Every child shall be entitled to free basic education which shall be compulsory in accordance with Article 28 of the United Nations Convention on the Rights of the Child.’</td>
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201 Art. 7(2).
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<td>KENYA</td>
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<td>Art. 5 prohibits discrimination on the ground of origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic or other status, race, disability, tribe, residence or local connection. Art. 12 concerning disabled children provides that: ‘A disabled child shall have the right to be treated with dignity, and to be accorded appropriate [...] education and training free of charge or at a reduced cost whenever possible.’ Art. 22 makes it possible for an aggrieved person to approach the High Court for enforcement of the Act.</td>
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<tr>
<td>UGANDA</td>
<td>National legislation.</td>
<td>The Ugandan Constitution follows the architecture of most post-colonial constitutions. Ch. 3 contains provisions relating to citizenship and Ch. 4 is titled ‘Protection and Promotion of Fundamental and Other Human Rights and Freedoms’. Ch. 3 sets out the conditions under which a person may be considered/become a Ugandan citizen. Citizenship may be by birth, adoption, registration and naturalisation. Abandoned young children (below five) are to be considered Ugandan citizens (Arts. 10–14). The Constitution permits dual citizenship (Art. 15). All births, deaths and marriages are to be registered by the state (see also Registration of Persons Act 2015). The Constitution expressly exempts children of refugees from being registered as citizens by birth. The provisions are ambiguous enough to be interpreted in either way.</td>
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<td>Constitution of the Republic of Uganda 1995</td>
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203 UNHCR (2015a).
204 See Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (2015:4).
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<td>UGANDA</td>
<td>Art. 21(2) outlaws discrimination based on ethnic origin, tribe, birth, race, colour, sex, social or economic standing, creed or religion, political opinion or disability, and any act or omission construed as such is punishable under the law. The Constitution further stipulates in Art. 21(1) that ‘all persons are equal before and under the law in all spheres and have the right, without any distinction, to enjoy equal protection of the law’. The Constitution also guarantees decent work under the following articles: Art. 25(1), which outlaws slavery and servitude; Art. 25(2), which outlaws forced labour; Art. 29(1) on the freedom of association, including forming and joining a trade union; and Art. 34(4) on protection of children from economic exploitation and hazardous work. According to Art. 189, the government retains the responsibility of managing the affairs of immigrants and emigrants (read with Schedule 6). Art. 40 recognises the right of every person to practise their profession and to freely choose their employment without any discrimination, the right to equal pay for work of equal value, and the right to form or join a trade union for the protection and promotion of economic and social interests.</td>
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<tr>
<td>Uganda Citizenship and Immigration Control Act (Ch. 66) 1999 as amended by the Uganda Citizenship and Immigration Control (Amendment) Acts of 2006 and 2009</td>
<td>This is the single nationally applicable citizenship and immigration control legislation. It came into effect in 2002. This has to be read with: (a) Uganda Citizenship and Immigration Control Regulations 2004; and (b) Uganda Citizenship and Immigration Control of Aliens Regulations 2004.</td>
<td>Unlike many other countries, Uganda has consolidated provisions with regard to citizenship and immigration in a single legislation. A migrant worker and members of his/her family may enter Uganda under s.53 of the Act after obtaining a valid entry permit, a certificate of permanent residence or a pass and such a person must be in possession of a passport, certificate of identity, Convention travel document or any other valid travel document. S.53(4) specifically provides that a person intending to take on employment under permit Class G (taking up employment) may only enter Uganda after the application for an entry permit has been granted. The different classes of persons who can apply for entry permits to Uganda to engage in remunerated work are indicated in Annex II to the Act. All persons who are not citizens but have received a permit or pass which is not for a short stay (less than 90 days) are required to apply to the Uganda Citizenship and Immigration Board for an aliens card as provided for under s.57 of the Act.</td>
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| **UGANDA** | S.59(1) of the Act provides that a person who is not a citizen of Uganda shall not take up employment (of any kind, either as a private person or in employment with a public or private business) unless that person is in possession of a valid entry permit, certificate of permanent residence or special pass under the Act. A person who is not a citizen of Uganda and who engages in any employment or any profession (i.e. business, informal trading, etc.), whether or not for gain, contrary to s.59(1) above or who employs any alien, whether or not for gain, whom he or she knows or has reasonable cause to believe is contravening subsection (1), commits an offence and is liable on conviction to a fine or imprisonment not exceeding two years or both. Under the Uganda Citizenship and Immigration Control Regulations 2004, a migrant worker in Uganda may apply for a dependant’s pass to regularise the stay of a family member in the country (Regulation 4). If a person wishes to enter the country for purposes of investigating possibilities for business or settlement, he/she may apply for a visitor’s pass. However, a holder of a visitor’s pass is not allowed to take up any employment for gain or otherwise. A person may also be issued with a special pass to enable him/her to complete immigration procedures or to complete a short assignment of not more than three months.  

207 Ibid. |
| **Registration of Persons Act 2015**  
208 [https://www.mia.go.ug/sites/default/files/download/The%20Registration%20of%20Persons%2C%20%20Act-2015.pdf](https://www.mia.go.ug/sites/default/files/download/The%20Registration%20of%20Persons%2C%20%20Act-2015.pdf). Accessed 13 February 2018. | This Act makes provisions for the registration of all persons in Uganda at any time and for the creation of a national identification register, and the issuance of national identification cards (in the case of migrants, it makes provision for the alien identification number (s.72) and for the issuance of an alien identification card (s.73)). Essentially, the alien identification number and card have been made prerequisites for accessing any public service (s.66), and for accessing services from any institution offering the following: employment; voter identification; passport issuance; bank account opening; purchase of insurance policies; purchase, transfer and registration of land; pension and social security; consumer credit; tax payment and financial services (see s.66(2)). Obviously, at least in principle, this makes the task of obtaining services by any undocumented migrant much more precarious. |
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<td><strong>UGANDA</strong></td>
<td><strong>National-level employment Act.</strong> Has to be read with: (a) The Employment Regulations 2011; and (b) Employment (Sexual Harassment) Regulations 2012.</td>
<td>The Employment Act imposes a duty on all parties involved in employment matters to seek to promote equality of opportunity with the view to eliminating any discrimination in employment (s.6(3)). S.6(2) requires all parties to promote and guarantee equality of opportunity for employment for persons who, as migrant workers or as members of their families, are lawfully within the territory of Uganda. This does not apply to undocumented workers. The Employment (Sexual Harassment) Regulations 2012 prohibit sexual harassment and set out procedures for investigation and resolution of claims.</td>
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<tr>
<td>Employment Act (No. 6 of 2006)</td>
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Other labour legislation

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| The Occupation, Safety and Health Act (No. 9 of 2006): | The Act protects all persons who may be affected by activities carried out in a workplace. For example, it protects the well-being of workers and people in proximity to the workplace. It provides for the duties and responsibilities of parties in ensuring a safe and healthy working environment.  
The Workers’ Compensation Act (No. 5 of 2000): | The Act provides the procedure and the requirements of employers and workers when accidents occur in the course of employment. It establishes the Medical Arbitration Board, which is a referral body for disputed final assessment of incapacities of injured workers.  
The Labour Disputes (Arbitration and Settlement) Act (No. 7 of 2006): | The Act establishes the Industrial Court, which is presided over by a High Court judge. The court handles labour disputes that have not been resolved by a district labour officer or the commissioner of labour.  
The Labour Unions Act 2006, read with Labour Union (Access of Union Officials to a Workplace) Regulations 2011: | Regulates the functioning of labour unions. In practice, of course, the enforcement of these laws varies in rigour depending on the institution and person enforcing. |

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211 See Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (2015) for greater detail.
### Law/Policy | Applicability (Sector/Administrative level) | Analysis
---|---|---
**UGANDA**

**Prevention of Trafficking in Persons Act 2009**[^12]  
National anti-trafficking legislation.  
This makes the trafficking of persons a crime, punishable with imprisonment – s.3 (there are aggravated provisions providing for punishment of those found guilty of trafficking children – s.4).  
S.6 makes it a crime for an employer to knowingly engage the labour or services of a victim of trafficking.

**Refugee Act (No. 21 of 2006)**[^213]  
Refugee legislation, in force nationally. To be read with the Refugees Regulations 2010[^214]  
The Refugee Act 2006 permits the following: refugees are permitted freedom of movement (s.30), the right to work, to own property and to access education and health services (s.29). The UNHCR has noted that ‘the fact that most refugees have access to agricultural land is a huge benefit and provides the foundation for sustainable livelihoods for over half the refugee population, even though the amount and quality of land currently available are unlikely to allow refugees to move much beyond subsistence farming’.  
Refugees are allowed freedom of residence, either in rural settlements or in urban centres. The asylum system allows refugees to stay in urban centres if they do not wish to stay in settlements.[^215]  
It is worth noting that while the provisions for de facto integration are well developed, refugees are excluded from de jure integration, i.e. they are precluded from claiming citizenship, etc.

**Education**  
Constitution of Uganda; the Education (Pre-Primary, Primary, and Post-Primary) Act 2008[^216]  
The Universities and Other Tertiary Institutions Act 2001[^217]  
Art. 34 of the Constitution states that ‘A child is entitled to basic education which shall be the responsibility of the State and the parents of the child’. There are provisions in the Constitution for affirmative action (Arts. 21, 32).  
S.10(3) of the Education (Pre-Primary, Primary, and Post-Primary) Act states that ‘primary education shall be universal and compulsory for pupils aged 6 (six) years and above which shall last seven years’.  
S.28 of the Universities and Other Tertiary Institutions Act provides for admission of both citizens and non-citizens who are found to be qualified.

[^215]: See UNHCR (2015a).  
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<td><strong>UGANDA</strong></td>
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<td>Health</td>
<td>Public Health Act 2000, the Constitution of Uganda; the Refugee Act.</td>
<td>Provisions of multiple Acts are applicable to the health of migrants — or rather, none of them seem to contain express provisions regulating access of migrants to health services. A non-justiciable provision of the Constitution states that one of the objectives of the Constitution is the access of all Ugandans to health services. The Public Health Act 2000 makes provision for infectious diseases, etc. but does not contain any provisions for healthcare access. The Refugee Act does not include any specific provisions on access to healthcare.</td>
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<tr>
<td>National Migration Policy</td>
<td>Non-justiciable policy document.</td>
<td>This acknowledges that if migration is ‘well managed’ it can contribute to the socio-economic development of the country. It is concerned with the following forms of migrations: labour migration, irregular migration, trafficking in persons, forced displacements, the Ugandan diaspora, foreign direct investment and the free movement of persons within EAC.</td>
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<td><strong>RWANDA</strong></td>
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<td>Constitution of the Republic of Rwanda</td>
<td>National legislation; in force – last amended in 2015.</td>
<td>The Rwandan Constitution was adopted in 2003 and has since been amended multiple times. Ch. IV (Arts. 12–43) contain the various fundamental rights and freedoms which accrue to all persons, though of course some of these may be circumscribed by law. Some of these provisions are applicable to all persons, and some are only applicable to Rwandans. Other provisions are drafted in an ambiguous way. All persons have the right to life (Art. 12) and enjoy the right to physical and mental inviolability (Art. 14). All persons are entitled to equal protection and treatment of/in law (Art. 15). Art. 19 makes provision for the protection of all children but does not specify what such protection would consist of. Arts. 23–24 state that all persons have the right to privacy and to their liberty. Art. 28 affirms the right of a person to seek asylum in Rwanda. All persons enjoy the right to due process of law and access to justice (Art. 29). All persons have the right to acquire and hold private property, including land (Arts. 34–35). Arts. 38–39 grant freedom of association and freedom of peaceful assembly.</td>
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220  See Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (2011) for additional analysis.
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<td>Arts. 30–32 recognise the right of any person to free choice of employment without any discrimination, equality of salary for equal work, and the right to form trade unions for the defence and promotion of legitimate professional interests. Labour unions of workers and associations of employers are free to have collective or specific agreements governing their working relations. The right of workers to strike is recognised and exercised under conditions defined by the law (Art. 33). It is not clear whether non-Rwandans are entitled to protection from non-discrimination – Art. 16 states that all Rwandans are born and remain equal, and then prohibits discrimination ‘based on, inter alia, ethnic origin, family or ancestry, clan, skin colour or race, sex, region, economic categories, religion or faith, opinion, fortune, cultural differences, language, economic status, physical or mental disability or any other form of discrimination’. The Rwandan government has previously argued that the anti-discrimination provisions are applicable to all. Only Rwandans have an express right to education (Art. 20). This Article also states that ‘Primary education is compulsory and free in public schools’ – in practice, Rwanda seems to have offered 12 years of basic free education to all. Similarly, only Rwandans ‘have’ a right to good health. Art. 25 permits dual citizenship, makes provision for a law on citizenship (see below) and specifies that: ‘All persons of Rwandan origin and their descendants are, upon request, entitled to Rwandan nationality.’ The right to free movement across Rwanda is also only guaranteed to Rwandans (Art. 26).</td>
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221 This seems to be a change from the earlier amendment of the Constitution. See Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (2011).


223 See UNHCR (2015b:8).
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<td><strong>RWANDA</strong></td>
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<td>Organic Law No. 30/2008 Relating to Rwandan Nationality[^24]</td>
<td>Law on citizenship – national legislation. This needs to be read with Presidential Order No. 21/01 of 27/05/2009 Establishing the Procedure for the Application and Acquisition of Rwandan Nationality[^25]</td>
<td>Rwandan nationality can be acquired by descent, birth, marriage and naturalisation. Art. 3 permits dual nationality. Art. 9 provides for children of either unknown or stateless parents (or children who cannot acquire the citizenship of their parents) to be considered Rwandan. The same applies for infants born to unknown parents. A person may acquire Rwandan nationality three years after marriage to a Rwandan national (Art. 11). Persons over 18 who have lived in Rwanda for longer than five years (and are considered to be economically independent) may apply for citizenship by naturalisation (Arts. 13–14). Persons acquiring citizenship through ‘manoeuvres, false statement, falsified or erroneous documents, fraud, corruption’ may be deprived of their citizenship (Art. 19).</td>
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<tr>
<td>Law No. 13/2009 of 27 May 2009 Regulating Labour in Rwanda[^26]</td>
<td>Labour legislation which has been given effect by a number of ministerial orders[^27]</td>
<td>Art. 12 of the Labour Law forbids direct or indirect discrimination aimed at denying a worker the right to equal opportunity or salary, especially when the discrimination is based upon race, colour, sex, marital status or family responsibilities, religion, faith or political opinions, social or economic conditions, country of origin, disability, previous, current or future pregnancy or any other type of discrimination. Art. 18 stipulates that employment contracts are to be written – this represents a long-standing demand of the International Labour Organization, although it leaves provisions of work permits for foreigners to be determined by immigration and emigration laws. The law aims to protect high-risk workers and their families; it prohibits child labour, forced labour and gender-based violence in the framework of employment (Arts. 4, 6, 8 of the Labour Law).</td>
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<td>Law No. 04/2011 of 21/03/2011 on Immigration and Emigration in Rwanda</td>
<td>Additional relevant (enacting) provisions include those aimed at setting out procedures for the establishment of occupational health and safety committees, prohibitions on child labour, fulfilment of duties of workers representatives, etc.</td>
<td>It establishes a Directorate General of Immigration and Emigration as the primary bureaucratic organisation for overseeing the Act. In general, the law provides for two kinds of permits – temporary or permanent residence permits – and three kinds of visas: entry, transit and tourist. The Directorate General may refuse either visas or permits to a person on grounds of criminality or if they believe that the person poses a threat to national security and public order in Rwanda (Art. 7). Arts. 12–13 define the categories of prohibited immigrants (those accused or convicted of serious criminality, among others) and undesirable immigrants (those who do not have funds to support themselves on their visit, persons violating the terms of their initial entry permits, etc.). Arts. 15–16 make provision for deportation of foreigners (and their dependents) convicted of crimes or when that person is ‘involved in acts that are detrimental to the national security, public order and Rwandan culture and good morals’. Arts. 18–20 impose duties on (a) employers, (b) heads of educational institutions, and (c) accommodations to ensure that any foreigners working/studying/staying have the authority or right to do so. Art. 30 makes provision for border passes which may be used by persons near the border for cross-border trading, etc. The Act also makes it an offence to re-enter Rwanda after being deported, while the conditions of deportation persist.</td>
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<td>Law No. 13ter/2014 of 21/05/2014 Relating to Refugees&lt;sup&gt;233&lt;/sup&gt;</td>
<td>Refugee legislation – came into effect in 2014, replacing the earlier laws of 2001 and 2006.</td>
<td>Rwanda follows an encampment policy (Art. 23).&lt;sup&gt;234&lt;/sup&gt; The bureaucratic body intended to oversee the adjudication of asylum applications is the Refugee Status Determination Committee. The definition of ‘refugee’ is the expanded one (see s.II of this note). Asylum-seekers are required to apply to local authorities immediately upon entering Rwandan territory (Art. 8). Art. 19 allows refugees to obtain Rwandan nationality in accordance with the immigration law. The Rwandan Nationality Law allows for the naturalisation of refugees and asylum-seekers married to Rwandan nationals (three years from the date of the marriage), as well as all children born in Rwanda to refugees and asylum-seekers after they reach adulthood. However, in practice, it seems that the occurrence of naturalisation is very rare.&lt;sup&gt;235&lt;/sup&gt;</td>
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<td>Law No. 23/2012 of 15/06/2012 Governing the Organisation and Functioning of Nursery, Primary and Secondary Education&lt;sup&gt;236&lt;/sup&gt;</td>
<td>Basic law organising the education sector, national legislation.</td>
<td>Art. 34 of the law states that ‘Primary school education is compulsory and free both in public and Government subsidized schools. Free education refers to lessons freely offered to a student by a teacher as well as basic teaching aids’.</td>
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<td>Healthcare</td>
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<td>Rwanda follows a universal healthcare model, which provides health insurance through a system called Mutuelles de Santé. The system is a community-based health insurance scheme, in which residents of a particular area pay premiums into a local health fund and can draw from it when in need of medical care. This is administered through Law No. 48/2015 of 23/11/2015 Governing the Organisation, Functioning and Management of Health Insurance Schemes in Rwanda.&lt;sup&gt;237&lt;/sup&gt; Every person residing in Rwanda technically enjoys the right of access to healthcare.&lt;sup&gt;238&lt;/sup&gt;</td>
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<sup>234</sup> See UNHCR (2015b).
<sup>235</sup> UNHCR (2015b:9–10).
<sup>238</sup> See also Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (2011).
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<td>National Migration Policy and Strategies(^\text{239})</td>
<td>Non-justiciable national policy.</td>
<td>Sets out a policy intended to promote economic growth by promoting skilled migration.</td>
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References


The four countries in this regional study – Kenya, Tanzania, Rwanda and Uganda – have differing approaches to mobility and labour-market participation. The four countries of the East Africa Community (EAC) are legally and economically bounded by a number of overlapping Regional Economic Communities (EAC, IGAD, COMESA), but their migration policies are not harmonised or domesticated at the national and subnational levels. Government actors – who control the admissibility and enforcement of decisions – take different approaches to mobility and the well-being of migrants which limit the potential of migration to contribute to economic development and poverty reduction.

Solutions require that i) state and local authorities have the capacity and incentive to implement commitments made under continental and regional frameworks to facilitate the free and safe movement of non-nationals; ii) resources are dedicated to holding dialogues with CSOs, training government authorities, and raising awareness among migrants of their rights and the capacity to uphold rights, so that violations can be addressed; and iii) discussions centre on advancing the welfare of host and migrant communities alike, focusing on the collective benefits of a common market protocol (CMP) for economic development and poverty reduction. In the search for more equitable access to services, issues such as social protection, taxation and portable social security should also be discussed, to maximise the protection of migrants and the contributions they can make. This study identifies specific obstacles to achieving these ends. It transforms empirical insights into a list of recommendations that reflect stakeholders’ expert views on how to provide local entry points to improving migration governance within the East Africa Community.