

ANALYSIS OF THE LEGAL AND POLICY FRAMEWORK ON MIGRATION AND HEALTH IN KENYA



IOM International Organization for Migration

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FOREWORD

Migration in Kenya is largely influenced by trends in East and Horn of Africa. Sustained movements of migrants, including asylum seekers, refugees and other displaced persons results from environmental degradation, armed conflict, and political, economic, and food crises. Kenya is also a preferred destination for labour migration and is affected by mixed migration flows originating from or transiting through East and Horn of Africa.

The health of migrants is determined by a number of factors, some of which are, to a large extent, outside the health sector. The conditions in which migrants travel, live and work often carry exceptional risks for their physical, mental and social well-being; hence the migration process itself can be regarded as a social determinant of health for migrants. The World Health Assembly resolution 61.17 on the health of migrants calls for the adoption of “national laws and practices that respect migrants’ right to health based on international laws and standards; implement national health policies that promote equal access to health services for migrants; extend social protection in health and improve social security for all migrants”.

As a result of the recommendations from the National Migration Health Consultation in Kenya in 2011, this report is a compilation and analysis of the legal and policy framework, programmes, informal interviews and relevant documents concerning migration and health in Kenya. The main aim of the report is to map laws, policies, strategies and guidelines in Kenya that affect migration health, and to identify the key gaps in the legal and policy framework. This report was developed in support of, and in line with, national priorities and IOM’s global, continental, regional, and sub-regional strategies.

The report demonstrates some level of commitment and on-going efforts by the Government of Kenya to put in place policies and procedures that address migration and health. The Constitution of Kenya accords every person in Kenya the right to the highest attainable standards of health and health care services in line with international law. However, other documents only focus on the “health of Kenyans” or are silent on migration and/or health. The report argues that the legal and policy framework related to migration and health should be based on principles of health equity and the right to health for all, and should explicitly include reference to migration and other determinants of migrants’ health.

I acknowledge and appreciate the work done by various persons, institutions and organizations in the accomplishment of this policy and legislative analysis on migration and health in Kenya. It is my sincere wish that Kenya will work towards achieving healthy migrants in healthy communities.



Ashraf El Nour
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ACRONYMS

ACHPR:	African Charter on Human and Peoples' Rights
AIDS:	Acquired Immunodeficiency Syndrome
BCC:	Behavior Change Communication
DLTLD:	Division of Leprosy, Tuberculosis and Lung Disease, MOPHS
GTZ:	Deutsche Gesellschaft für Technische Zusammenarbeit
HIV:	Human Immunodeficiency Virus
ICCPR:	International Covenant on Civil and Political Rights
ICERD:	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR:	International Covenant on Economic, Social and Cultural Rights
IDP:	Internally Displaced Person
IEC:	Information, Education and Communication
IHR:	International Health Relations
IOM:	International Organization for Migration
KAIS:	Kenya AIDS Indicator Survey
KDHS:	Kenya Demographic and Health Survey
KIHBS:	Kenya Integrated Household Budget Survey
KNASP:	Kenya National AIDS Strategic Plan
MARPS:	Most At-Risk Populations
MDG:	Millennium Development Goals
MDRTB:	Multi-Drug-Resistant Tuberculosis
MIS:	Malaria Indicator Survey
MOMS:	Ministry of Medical Services
MOPHS:	Ministry of Public Health and Sanitation
NACC:	National AIDS Control Council
NASCOP:	National AIDS/STI Control Program
NHSSP:	National Health Sector Strategic Plan
NLTP:	National Leprosy Tuberculosis Programme
OAU:	Organization of African Unity
PWD:	Persons with Disability
STI:	Sexually Transmitted Infection
TB:	Tuberculosis
UNHCR:	United Nations High Commissioner for Refugees
WHA:	World Health Assembly
WHO:	World Health Organization

Section I: Introduction

I.1 Background Information

Kenya experiences different patterns of international and internal migration that are heavily influenced by broader trends in East Africa and the Horn of Africa. Internally, rural-urban migration is common, particularly among youth, as migrants seek out livelihoods, work and sometimes education, often as a result of unemployment, poverty and the negative effects of environmental degradation and climate change on agricultural land. Migrants from neighboring countries also enter Kenya – through authorized migration channels and irregularly – in search, *inter alia*, of economic opportunity. There are significant number of migrant workers such as transport workers and sex workers along transport corridors. Moreover, there are a substantial number of displaced persons in Kenya, including internally displaced persons (IDPs), driven to move as a result of armed conflict, situations of generalized violence, violations of human rights, natural disasters or other factors, as well as externally displaced persons like asylum seekers and refugees fleeing persecution, but also e.g. events seriously disturbing public order in either part or the whole of his country of origin or nationality (ACP, 2010; IOM, 2011).

Accurate information regarding the total number of migrants in Kenya is not available, as data is lacking. One United Nations organization indicated that in mid-2010, the estimated total number of international migrants stood at 817,747; nearly one-third were refugees and just over one-half were female (UNPD, 2009). Moreover, as of January 2013, Kenya hosted a total of 564,933 recognized refugees, making it one of the top refugee destination countries in the world. Most lived in organized refugee camps in Dadaab and Kakuma, while over 50,000 resided in urban areas. There were also 41,944 asylum seekers; 412,000 IDPs, largely resulting from the post-election violence of 2007 – 2008; and 20,000 stateless persons. A significant majority of the refugees in Kenya originated from Somalia; however, most new arrivals and asylum seekers were from South Sudan (UNHCR, 2013a).¹

I.2 Migration, Development and Health

The migration process can have positive or negative economic, health, social and environmental consequences that affect a myriad of people and communities far beyond the migrants themselves – including the migrants’ home communities and families, the transit communities through which they move and host communities where the migrants live and work.

For example, the remittances many migrants send to their families at home can have a significant cumulative impact on their countries of origin. In fact, in Africa, remittances exceed the amount of financial flows from official development assistance and foreign direct investment (AfDB et al., 2013). Those who return to their home countries can also bring new knowledge and experiences that might benefit the economy. At the same time, migration might negatively impact certain sectors of the economy, such as health care, through “brain drain,” or the emigration of skilled health care professionals to other countries (APC, 2010). Destination countries can also benefit from the work, expertise and economic resources migrants bring to their economies. Broader social, cultural and environmental changes might be positive or negative.

¹ Specifically, UNHCR expected 1,840 asylum seekers from Somalia in 2013, and 19,070 from Sudan/South Sudan (along with 7,380 from Ethiopia and 16,430 from various other countries). Separate statistics for Sudan and South Sudan are not available; however, UNHCR indicates that most new refugee arrivals in Kenya in 2012 and 2013 were from South Sudan (UNHCR, 2013a; UNHCR, 2013b).

The connection between migration and health can be found at different levels, from on-the-ground experiences of migrants to policy frameworks that guide how migrants and those affected by migration are able to access health services and programmes (WHO, 2010). Four key factors specifically support the need to consider migration and health and how it impacts on the health of a country (IOM, 2011):

1. High levels of migration, both international and internal;
2. High prevalence of communicable diseases, such as HIV, tuberculosis, cholera, malaria and measles;
3. Struggling public health care system and the migration of health workers; and
4. Increasing recognition that healthy migration is required to achieve development targets.

The conditions surrounding modern migration serve as social determinants of health. Although migration itself is not a risk factor, the process can expose migrants to increased physical, mental and psychosocial health risks, including poverty, stigma, discrimination, social exclusion, language and cultural differences, separation from family and socio-cultural norms, financial and administrative hurdles and uncertain legal status. The health risks and outcomes vary based on migrants' individual characteristics, such as age, gender, health status and education, as well as the circumstances and conditions under which they migrate, for example cases of forced migration or clandestine travel (IOM, 2011; Mosca et al., 2012).

Additionally, migrant workers are often employed in sectors characterized by harsh living and working conditions with hazardous occupational health and safety environments, such as the construction, farming and transport industries as well as domestic work. These conditions can be exacerbated by exploitative labour conditions, particularly towards irregular migrants (Mosca et al., 2012).

As highlighted in the 2009 Human Development Report, migration can and should contribute to social and economic development (UNDP, 2009). In order to ensure that the developmental benefits of migration are realized, a process of "healthy migration" needs to be facilitated – this means focusing on the health of internal and international migrants. This can only be achieved if migration needs are mainstreamed within the public health response and other social services. This will ensure that all migrants are able to access positive social determinants of health, including access to public health care systems (IOM, 2011).

1.3 Policy and Legislative Instruments on Migration and Health

Programming for health in migration-affected communities must be seen in light of global, regional and national policies and legislative instruments. There are various international and regional instruments that call upon states to address migration and health. These include the following: Constitution of the World Health Organization (WHO), 1946; Universal Declaration of Human Rights, 1948; International Covenant on Economic, Social and Cultural Rights, 1966; Convention on the Rights of Persons with Disabilities, 2008; Resolution on the Health of Migrants, 61st World Health Assembly, 2008; Declaration of Commitment on HIV/AIDS, United Nations General Assembly Special Session on HIV/AIDS, 2001; and the Political Declaration on HIV/AIDS, United Nations General Assembly High Level Meeting on AIDS, 2011. Some of these are explored in more detail in the sections below.

1.4 Methodology and Assessment Framework

1.4.1 Purpose of the Policy Analysis

In May 2011, the Ministry of Public Health and Sanitation (MOPHS) hosted the Kenya National Consultation on Migration Health that was organized in partnership with the International Organization for Migration (IOM), WHO and other stakeholders.² The three-day meeting brought together about 100 participants, including top national government officials as well as representatives from districts that host various categories of migrants in their constituencies, and hence are faced with different gaps and challenges related to migration and health. The meeting demonstrated a strong unity of purpose in moving the migrant health agenda forward to ensure migrants have access to quality, equal health care.

The participants noted a lack of migrant-sensitive and inclusive legislation, policies and programming that promote migrant health, awareness and prioritization of relevant issues among policy makers. It was resolved that through partnerships between the Government of Kenya and key stakeholders, migration health should be mainstreamed in health and development legislation, policies, budgeting, programmes and strategies, and integrated within the National Health Sector Strategic Plan.

As a primary step towards this goal, IOM initiated an analysis of pertinent legislation, national and sectoral policies, strategies, frameworks and other relevant documents and held discussions with key government officials and other stakeholders. The analysis targeted both national and local levels to gain an in-depth understanding of issues around inequalities in health care accessibility and acceptability among migrants and their host communities. It sought to take stock of where the country is with regard to the inclusion of migrants in key health policies, in order to identify gaps and make recommendations on the way forward.

1.4.2 Methods

The analysis process involved the following stages, which build upon each other:

- i. Problem identification:* Completed during the National Consultation on Migration Health, wherein participants resolved to increase the collection, dissemination and utilization of information on migration health through research, surveillance, regular dialogue and migrant-sensitive programming and to use this information to form concrete, evidence-based practices, tools and innovative approaches.
- ii. Process definition:* This entailed a desk review of 24 national policy documents and strategy reports regarding migrant health.
- iii. Qualitative analysis:* 21 in-depth, one-on-one interviews with government officials, development partners and other key stakeholders at local and national levels were also conducted to assess migrants' accessibility to health care services in the country.
- iv. Process analysis:* Data from the literature review and qualitative analysis were triangulated to assess what is known and what is in practice with regard to migrant health policy, and to identify gaps in current legislation.

² Other stakeholders included the Ministries of Medical Services, Immigration and Registration of Persons, Foreign Affairs and Special Programmes; learning institutions; international non-governmental organizations; and representatives from migrant communities.

Section 2: Policy Analysis Findings

2.1 Overview of International Instruments

The Government of Kenya has ratified – and is thus legally bound by – several international and regional instruments that codify the rights to equality, non-discrimination and health in international law. These instruments guarantee all people, including migrants, human rights. Kenya has confirmed its commitment to upholding these rights. Indeed, the Constitution of Kenya declares that any international treaty to which Kenya is a party is considered part of domestic law (Article 2). Accordingly, it recognizes that the treaties described herein should be legislated into national law and abided by as such.

2.1.1 Equality and Non-Discrimination

Equality and non-discrimination provide the foundation for the realization of all other human rights, including the right to health. Kenya has ratified a variety of treaties that entitle all people to the same rights and freedoms and prohibit discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, e.g.:

- International Covenant on Civil and Political Rights (ICCPR, 1966);
- International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966);
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1965); and
- African Charter on Human and Peoples' Rights (ACHPR, 1981).

Because of the principle of non-discrimination, these agreements encompass and protect migrants, regardless of their status. The Convention Relating to the Status of Refugees (1951) and the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (1969), which have also been ratified by Kenya, further oblige state parties not to discriminate against refugees on the basis of religion, race or country of origin.

To uphold these treaties and guarantee equality and non-discrimination for all individuals and groups within society, formalizing these rights into national and local laws represents only the first step. Barriers to the realization and enjoyment of these rights in law and practice must also be addressed.

2.1.2 Right to Health

In the Preamble to its Constitution (1946), WHO defines health as “...a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” It declares that one of the fundamental rights of every human being is to enjoy “the highest attainable standard of health.”

Kenya has committed itself to upholding these rights through the ratification of multiple international treaties. For example, ICESCR has the most comprehensive article on the right to health in international human rights law, providing for “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” In its General Comment No. 14 (2000), the Committee on Economic, Social and Cultural Rights (CESCR), which monitors the

implementation of the Covenant, stresses that *“health is a fundamental human right indispensable for the exercise of other human rights.”* It also expressly states that the rights to equality and non-discrimination include access to both health care and the fundamental determinants of health. In General Comment No. 20 (2009), CESCR further states that nationality should not factor into the application of the Covenant: it applies *“to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”*

Other treaties ratified by Kenya that guarantee the right to health include the following:

- ACHPR (Article 16);
- ICERD (Article 5);
- 2006 Convention on the Rights of Persons with Disabilities (Article 25);
- 1989 Convention on the Rights of the Child (Article 24); and
- 1979 Convention on the Elimination of All Forms of Discrimination against Women (Articles 11 and 12).

General comments and recommendations on ICERD and CEDAW specifically refer to the rights of non-citizens.³

Unfortunately, as of September 2013, Kenya had not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), which recognizes the vulnerability of migrants and the insufficient protection of their rights. It provides for the right to equal treatment regarding access to social and health services for regular migrant workers and members of their families, and some basic rights for all migrants. Article 28 states that migrant workers are entitled to emergency medical care *“on the basis of equality of treatment with nationals of the State concerned,”* which *“shall not be refused them by reason of any irregularity with regard to stay or employment.”* Article 81(1) ensures that nothing in the Convention shall affect more favourable rights or freedoms granted to migrant workers and members of their families by virtue of the law or practice of a state party, or any bilateral or multilateral treaty in force for the state party concerned.

Similarly, Kenya had not ratified the 1954 Convention Relating to the Status of Stateless Persons, which protects individuals not recognized as nationals by any state and guarantees non-discrimination and fundamental rights, including access to basic social services, such as education, and social security provisions equal to those provided to nationals in cases of sickness, disability, unemployment and so forth.

³ In its General Recommendation No. 30 (2004), the Committee on the Elimination of Racial Discrimination declares that state parties to ICERD should respect this right by, amongst other things, removing *“obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens”* and ensuring that state parties *“respect the right of non-citizens to an adequate standard of physical and mental health by...refraining from denying or limiting their access to preventive, curative and palliative health services.”* In its General Recommendation No. 24 (1999), the Committee on the Elimination of Discrimination against Women stresses that the health needs and rights of vulnerable women – including migrants, refugees and internally displaced persons (IDPs) – should be given particular attention.

2.1.3 World Health Assembly (WHA) Resolution 61.17

Resolution 61.17, adopted during the 2008 World Health Assembly (WHA), commits member states of the WHO, including Kenya, to improving the health of migrants. The resolution notes the great impact that migrant health has on the health of the general population. It highlights the need for member states to be sensitive to migrant health issues at the policy implementation level, as well as in service provision.

The Resolution also stresses the importance of generating data on migrant health – including health status as well as accessibility to and acceptability of health care for migrants – in order to develop evidence-based approaches to migrant health issues. Member states are urged to create migrant-sensitive policies that will ensure adequate service delivery, including but not limited to the following: service provision without discrimination; identifying gaps in service delivery; capacity building of service providers; and bilateral and multilateral cooperation on migrant health issues.

2.2 National Legislation

The Government of Kenya has adopted a variety of legislation that directly or indirectly addresses the human rights of migrants. Table 1, below, describes some of the key features of those laws, beginning with the 2010 Constitution. The Bill of Rights, anchored in the Constitution, recognizes the government’s duty to observe, respect, protect, promote and fulfill the fundamental human rights and freedoms of all people in Kenya, without discrimination.

Although not all of the legislation included in the table below directly references migrants, the language used is inclusive of all people, not only nationals, and thus should extend to migrants.

Table 1. Laws Acknowledging or Extending to the Health and Rights of Migrants

Legislation	Purpose and Key Features	Addressing Migrants
Constitution, 2010	<ul style="list-style-type: none"> Article 27: Prohibits discrimination on all grounds, including race, sex, health status, ethnic or social origin, language or birth Article 43: “Every person has the right to the highest attainable standard of health” Recognizes related rights, which serve as determinants of health, including basic nutrition, shelter, infrastructure, water and an adequate standard of living 	<ul style="list-style-type: none"> No direct reference to migrants, but rather “minorities,” “marginalized groups,” “every person” and “any persons”
Counter Trafficking in Persons Act, 2010	<ul style="list-style-type: none"> Operationalizes Kenya’s obligations to domesticate the 2003 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against transnational Organized Crime Article 15: Service provision for trafficking victims, including: medical assistance; psychosocial support; return, resettlement and reintegration services; shelter; etc. 	<ul style="list-style-type: none"> Directly applicable to a vulnerable group of migrants, namely victims of trafficking in persons

<p>Refugee Act, 2006 (revised 2012)</p>	<ul style="list-style-type: none"> • Provides for the recognition, protection and management of refugees • Special protection for refugees and asylum seekers with disabilities, trauma, etc. • Accelerates asylum in medical emergencies • Stipulates that refugee camps and transit centers must be maintained in an environmentally sound manner 	<ul style="list-style-type: none"> • Directly applicable to a particular vulnerable group of migrants that is asylum seekers and refugees
<p>Mental Health Care Act, 2012</p>	<ul style="list-style-type: none"> • Governs the care and treatment of individuals suffering from mental illness, guaranteeing basic rights, including access to care • Repeals its predecessor Act, which prohibited hospital treatment for individuals from other countries without prior written approval 	<ul style="list-style-type: none"> • No direct reference to migrants but applies to all persons with mental illness • Repeals former law that provided for treatment based on nationality • Does not recognize any particular vulnerability or needs experienced by migrants
<p>HIV and AIDS Prevention and Control Act, 2006 (revised 2012)</p>	<ul style="list-style-type: none"> • Provides for the prevention and management of HIV and AIDS, including treatment and support for people living with the disease • Article 33: Prohibits discrimination, deportation, quarantine and refusal of entry into Kenya based on HIV status 	<ul style="list-style-type: none"> • Applies to all persons with HIV and AIDS • Includes direct reference to non-discrimination of migrants based on HIV status • Does not recognize any particular vulnerability or needs experienced by migrants
<p>Persons with Disabilities Act, 2003 (revised 2010)</p>	<ul style="list-style-type: none"> • Provides for the rights, rehabilitation and equality of opportunity for persons with disabilities • Establishes the National Council for Persons with Disabilities 	<ul style="list-style-type: none"> • No direct reference to migrants but applies to “persons with disabilities in Kenya” • Does not recognize any particular vulnerability or needs experienced by migrants

The 2012 Health Act is an additional important piece of legislation, although it has not yet been tabled in Parliament. Its objective is to enable the realization of the right to health in line with the provisions of the Constitution of Kenya. Specifically, it aims to “*establish a national health system... and facilitate in a progressive and equitable manner the highest attainable standard of health services*” and health. To that end, the Act states that Kenya will protect, promote and fulfill the rights of all people living in Kenya, including vulnerable groups as defined by the Constitution. The Act does not specifically mention migrants but refers to all people; it is thus inclusive of migrants.

On the other hand, Table 2 lists several important pieces of relevant legislation that are not inclusive of migrants. The Public Health Act is perhaps the most significant. It regulates the public health activities of the state, including the prevention and containment of communicable diseases, sanitation, housing and the regulation of food and water supplies. It makes no mention of the right to health.

Rule 25 of the Public Health (Port, Airport and Frontier Health) Rules section provides for the quarantine, reporting and release of immigrants prohibited from entering Kenya after examination by an immigration officer. However, the Act does not define who a migrant is nor does it provide information regarding how to deal with those not from specific ships/vessels.

Table 2. Laws Relevant to Health that Do Not Acknowledge or Extend to Migrants or Their Health Needs	
Legislation	Purpose
Public Health Act, 1986 (revised 2012)	<ul style="list-style-type: none"> Regulates efforts regarding infectious disease, sanitation, housing, food and water supplies, etc.
The National Hospital Insurance Fund Act, 1998	<ul style="list-style-type: none"> Establishes a Fund to collect contributions to pay hospital benefits for members and their dependents
Malaria Prevention Act, 1983 (revised 2012)	<ul style="list-style-type: none"> Provides for activities undertaken to prevent malaria by health authorities (e.g., construct drainage systems)
Children’s Act, 2001 (revised 2012)	<ul style="list-style-type: none"> Provides for the protection of children, realization of their rights and administration of children’s institutions

Table 3, below, describes additional laws and regulations that are relevant to migrants. None specifically refer to rights for migrants.

Table 3. Additional Laws Relevant to Migration and Migrants	
Legislation	Purpose
Kenya Citizenship and Immigration Act, 2011	<ul style="list-style-type: none"> Regulates matters relating to citizenship and immigration Recognizes various categories of migrants, including foreign nationals and stateless persons, and stipulates procedures and requirements necessary for such persons to obtain citizenship Defines a prohibited immigrant and inadmissible person, which includes a person who refuses to submit for examination by a medical practitioner after being required to do so. While the current version no longer specifies mental disorders as a basis for inadmissibility, “anyone who has been judicially declared incompetent” is inadmissible.
2012 Kenya Citizenship and Immigration Regulations	<ul style="list-style-type: none"> Based on the Citizenship and Immigration Act, regulates citizenship registration, issuance of passports and other travel documents, immigration control, etc. Specifies the class of permits that refugees and other migrants can access, as well as the requirements for obtaining them; none are health requirements
Kenya Citizens and Foreign Nationals Management Service Act, 2011	<ul style="list-style-type: none"> Provides for the creation and maintenance of a national population register to record identification and registration information for all Kenyans and resident foreign nationals; includes asylum seekers and refugees as defined in the Refugee Act Governs the administration of laws relating to births, deaths, marriages, identity and travel documentation, immigration matters and related matters

2.3 National Strategies

Kenya has created national strategies to guide the achievement of its health goals. Although the foundational plans – Kenya Vision 2030 and the National Health Sector Strategic Plan – do not delineate approaches to address the health vulnerability of migrants, several of the specialized strategies highlight migrants and their health needs.

As detailed in Table 4, below, the National Reproductive Health Strategy, National AIDS Strategic Plan and Division of Leprosy, Tuberculosis and Lung Disease Strategic Plan specifically address migrant health vulnerabilities, and others acknowledge them.

Table 4. National Health Strategies and Migration		
Strategy	Purpose and Key Features	Addressing Migrants
Vision 2030	<ul style="list-style-type: none"> • Development blueprint covering the period from 2008 to 2030 • Encompasses economic, political and social “pillars” to help transform Kenya into an industrializing, middle-income nation by 2030 • Health sector under the social strategy is specific in its mandate to invest in the people of Kenya to improve their overall livelihood and to ensure equitable and affordable health care services for all Kenyans • Devises strategies to reduce vulnerabilities experienced by IDPs and refugees – e.g., by resolving land issues 	<ul style="list-style-type: none"> • Makes no specific mention of migrant in generals, but it recognizes internally and externally displaced persons as vulnerable groups • Highlights the significant refugee burden in Kenya, observing the health, environmental and security risks faced and sometimes posed by refugees • Does not propose a direct strategy aimed at addressing migrant health vulnerability
The Second National Health Sector Strategic Plan (NHSSP 2005 –2010)	<ul style="list-style-type: none"> • Aims to improve the health status of Kenyans through the provision of humane, compassionate and dignified health care to all, including vulnerable populations • Includes specific guidelines with regard to health care provision for vulnerable groups, but only a few financially vulnerable groups (e.g., orphans, single mothers and patients with chronic diseases) are named 	<ul style="list-style-type: none"> • Emphasizes reaching Kenyans; there is no mention of any of the categories of migrants • The third NHSSP (2012/13 – 2016/2017) is currently under review; it is hoped that the revised version will focus on the entire population in Kenya, including non-nationals
The Kenya National Reproductive Health Strategy (2009 – 2015)	<ul style="list-style-type: none"> • Emphasizes addressing the special reproductive health needs of the poor, hard-to-reach and other vulnerable populations through increased access to sexual and reproductive health services for these populations • Aims to improve financing for and facilitate implementation of reproductive and maternal health care within communities 	<ul style="list-style-type: none"> • Hard-to-reach populations named include communities that lead pastoralist or nomadic lives in the arid or semi-arid regions of Kenya, IDPs, refugees and migrant workers in industries and farms

The Third Kenya National AIDS Strategic Plan (KNASP 2009/2010 –2012/2013)	<ul style="list-style-type: none"> • Aims to achieve Kenya’s universal access targets for quality integrated services at all levels to prevent new HIV infections, reduce HIV-related illnesses and deaths and mitigate the effects of the epidemic on households and communities 	<ul style="list-style-type: none"> • Recognizes populations of humanitarian concern, most at-risk and vulnerable populations such as refugees, IDPs and other migrants as groups at greater risk for HIV infection and therefore requiring specialized programming
The National Strategy on HIV/AIDS and STI Programming along Transport Corridors	<ul style="list-style-type: none"> • Aims to <i>“provide a national framework that will guide delivery of HIV prevention, treatment, care and support services for mobile populations and communities along the transport corridors in Kenya....”</i> • Mainly targets truck drivers, sex workers, men who have sex with men and their sexual partners, as well as those who may directly or indirectly interact with them, such as border officials, police officers and the general population within the space of vulnerability 	<ul style="list-style-type: none"> • Focuses on migrants (who it refers to as mobile populations) and those they interact with along transport corridors and other spaces of vulnerability • Acknowledges the need for a health service network throughout the East Africa region to serve migrants, but focuses on national and sub-national levels
The Division of Leprosy, Tuberculosis and Lung Disease (DLTLD) Strategic Plan, 2011 – 2015	<ul style="list-style-type: none"> • The national response to leprosy, tuberculosis (TB) and lung disease • Aims to improve access by such special groups and populations to TB, leprosy and lung health services 	<ul style="list-style-type: none"> • Recognizes the role of cross-border migration in TB transmission • Focuses on provision of TB treatment among migrants as well as enhancement of strategies to control cross-border infection and spread of the disease • Nomadic communities, migrant workers, including transport workers, as well as those living in densely congregate settings (such as slums, camps and prisons) are identified as populations at a higher risk of acquiring TB
The National Malaria Strategy 2009 – 2017	<ul style="list-style-type: none"> • The overall goal is to achieve a malaria-free Kenya • By 2017, it aims to reduce malaria morbidity and mortality by two-thirds compared to 2007-2008, through the implementation of prevention, treatment and surveillance programs 	<ul style="list-style-type: none"> • The earlier 2001 – 2010 Strategy recognized refugees from areas not traditionally exposed to malaria as a special at-risk group and acknowledged that population movement arising from complex emergency situations can result in endemic malaria outbreaks requiring specialized responses • The updated 2009 – 2017 Strategy makes no mention of migrants or concerns related to migration, beyond a cursory statement recognizing that internal and cross-border population movements impact transmission

2.4 Guidelines

As demonstrated by the table below, the guidelines in place regarding HIV, STIs, TB and malaria all acknowledge the role of migration in disease transmission.

Table 5. National Health Guidelines and Migration		
Guidelines	Purpose and Key Features	Addressing Migrants
National Guidelines for HIV/STI Programs for Sex Workers, 2010	<ul style="list-style-type: none"> The National AIDS Strategic Plan 2009 – 2013 (see Table 4) recognized that certain categories of most at-risk populations (MARPs) experience barriers that limit their access to health and social services because some of their behaviors and/or practices are criminalized and stigmatized in society; these MOPHS guidelines aim to address this service gap for MARPs Provide for the following: a framework for all health service providers to create an enabling environment; empowerment of sex workers to reduce their risk of acquiring and/or transmitting STIs and to seek and receive appropriate early diagnosis and treatment; and a benchmark against which health services for sex workers are monitored and evaluated regularly to inform continuous improvement in the access, uptake and effective use of prevention activities 	<ul style="list-style-type: none"> Identify several populations as at greater risk for HIV infection that the general population, including the following: sex workers; mobile populations (that means migrants), including refugees, displaced persons and truck drivers; men who have sex with men; male prisoners; injection-drug users; and fishing communities
DLTLD Guidelines on Management of Leprosy and Tuberculosis	<ul style="list-style-type: none"> Address TB management in the country and detail the need for and process of identification of people with TB and subsequent treatment, with a target treatment rate of at least 85% Suggested interventions include suitable Information, Education and Communication (IEC), Behavior Change Communication (BCC) as well as TB case detection and management 	<ul style="list-style-type: none"> Identify truck drivers, refugees and displaced persons from the surrounding countries as a major source of TB-HIV and MDR-TB and key target groups for TB-related interventions Do not refer to other categories of migrants
National Guidelines for the Diagnosis, Treatment and Prevention of Malaria in Kenya (2010)	<ul style="list-style-type: none"> These MOPHS guidelines aim to reduce morbidity and mortality due to malaria 	<ul style="list-style-type: none"> Identify immigrants, visitors and travellers from areas of low or no malaria transmission among others as being most at risk for malaria infection There is no further mention of migrants

2.5 Policies

2.5.4 The Kenya Health Policy (2012–2030)

The national Health Policy framework is centered on attaining the highest possible health standards in a manner responsive to population needs. It seeks to ensure that all services are provided to all individuals in a community, in an inclusive and non-discriminatory manner. Further, the framework provides for the provision of essential medical services and the scaling up of physical access to medical services by the whole population, with local solutions designed for marginalized and vulnerable populations, including those in hard-to-reach areas of the country, those in informal settlements and MARPS. Hard-to-reach and vulnerable populations are not further defined, and migrants are not mentioned in the policy.

However, although the goal of the policy is to achieve the highest attainable health standards in a manner reflective of *“the needs of the population,”* the policy states that it will seek to accomplish this aim by *“supporting provision of equitable, affordable and quality health and related services at the highest attainable standards to all Kenyans,”* thus negating the right to health for all persons. The policy also makes references to the *“right to health by all Kenyans”* and *“health of Kenyans.”*

2.6 Reports and Surveys

Table 6, below, illustrates that data collection and analysis regarding migration has not been prioritized in Kenya, although the most recent AIDS Indicator Survey suggests that this might be changing. The lack of accurate data has ramifications regarding the government’s ability to effectively address migrant needs related to health and other areas.

Table 6. National Surveys and Data Collection Regarding Migrants		
Instrument	Purpose and Relevant Features	Migration Data
Kenya Population and Housing Census	<ul style="list-style-type: none"> Assesses the population (including demographic, social and economic data) and housing of the country every 10 years; last completed in 2009 Includes indicators relevant to migration, e.g., district/country of birth, district/country of previous residence and date of moving to current residence 	<ul style="list-style-type: none"> Data related to migration has not been analyzed and/or disseminated
Kenya Demographic and Health Survey (KDHS 2008 – 2009)	<ul style="list-style-type: none"> Nationally representative survey conducted every five years to provide data to monitor the population and health situation in the country Does not collect information on nationality status Several questions address internal migration, e.g., length of time in current residence and nature of previous residence (i.e., city, town or countryside) 	<ul style="list-style-type: none"> Results of relevant questions were not publically reported No analysis of migration’s impact on health outcomes has been completed
National Survey for Persons with Disabilities, 2008	<ul style="list-style-type: none"> Aims to get up-to-date information on persons with disability (PWDs) to inform the planning, monitoring and evaluation of programmes Specifically estimates the number and distribution of PWDs; the nature, types and causes of their impairments; the problems they face; and the coping mechanisms they use 	<ul style="list-style-type: none"> Did not address any aspect of migrant health Disabilities among migrants were not highlighted

<p>Kenya AIDS Indicator Survey (KAIS 2007)</p>	<ul style="list-style-type: none"> • Aims to inform program planning, evaluation and advocacy regarding HIV prevention, treatment and care in Kenya • Obtains nationally representative estimates regarding behavioral, clinical and biological indicators for HIV/AIDS 	<ul style="list-style-type: none"> • 2007 data was not disaggregated by nationality status • 2012 KAIS contained migration indicators but the data is not included in the preliminary results
<p>Kenya Integrated Household Budget Survey (KIHBS 2005/06)</p>	<ul style="list-style-type: none"> • Aims to guide investment and development policy decisions by: providing improved and timely statistics on poverty, welfare and employment; informing the derivation of the consumer price index; and revising national accounts information • Captures data on socio-economic aspects of the population (e.g., education, health, housing, water, sanitation) 	<ul style="list-style-type: none"> • Did not capture information regarding migrants in spite of its national outlook

2.7 Key Informant Findings

This section briefly presents findings from qualitative interviews conducted with key stakeholders responsible for health programming in Kenya. Respondents included District Medical Officers of Health (DMOH), key respondents from relevant health ministries and departments, development partners and institutions implementing migrant health programmes.

2.7.5 Knowledge and Practice on Migrant Health

Most of the key informants reported that there appeared to be no policies, guidelines or strategies that explicitly address migrant health. One of the respondents noted that the government was generally not discriminating against migrants seeking health services. A respondent also noted that it was difficult for a health care service provider to turn away a client purely on the basis of their status – migrant or national: *“For us, all clients are supposed to be attended to, regardless of their nationality or migrant status. As a service provider, I am supposed to attend to everyone that seeks services from our facility.”*

2.7.6 Organizational Policies and Strategies

Within some institutions, both government and non-governmental, deliberate efforts were underway to make health service provision migrant-friendly and accessible to migrant communities. Some reported specifically catering to migrants to the extent of providing information in a language they could understand. A respondent noted that within a particular setting, the government was sensitive to migrants’ needs, provided treatment services to migrants – such as those with multi-drug-resistant TB – and standardized training of health care workers to cater to migrants and host community needs.

Section 3: Discussion

3.1 Summary of Analysis

Kenya continues to experience different patterns of migration that are heavily influenced by broader trends in East Africa and the Horn of Africa. At present, Kenya hosts approximately 600,000 refugees and asylum seekers and significant numbers of other migrants, e.g. migrant workers in a regular and irregular status. As Kenya prepares to become a middle-income country and regional economic hub in line with Vision 2030, internal and international – including intra-regional – labour migration will become more significant. In spite of this heterogeneity of migrants and despite its international commitments, Kenya is yet to effectively integrate migration into all its national legislations and mostly in its policies and development plans in order to address the health needs of the wide spectrum of migrants.

There are some positive strides; for instance, the Constitution of Kenya accords every person in Kenya the right to the highest attainable standards of health and health care services in line with international law. However, this is negated by the Kenya Health Policy 2012 – 2030, which addresses the “health of Kenyans.” In addition, the Public Health Act is silent on migration, while the migration legislations are silent on health, despite the clear link between the two (IOM, 2011).

The use of terms such as “vulnerable populations,” “hard-to-reach” and “ordinarily resident” in several documents is problematic. These terms are broad enough for varying interpretations; as such, they represent a source of ambiguity and can potentially lead to the exclusion of some groups, such as migrants. Specifically for policy interpretation and implementation, such terms present the challenge of who to include or exclude when planning and targeting efforts to a specified need.

In practice, the challenge in Kenya, as in most Africa countries, is how to prioritize the health of migrants when the lack of or geographic and financial inaccessibility to health care services remains a pervasive cause of high levels of morbidity and mortality for nationals (IOM, 2011). Such enjoyment of these rights by migrants largely relies on the measures and commitment of the government to implement and enhance access to these services by all in line with its international obligations. States with insufficient resources are obligated to take concrete steps to achieve progressive realization of the right to health, while guaranteeing that the right will be exercised without discrimination. For instance, in Article 2(1), ICESCR specifies that states must maximize their available resources and adopt legislative measures to achieve full realization. It should also be noted that in its General Comment No 3 (1990), CESCR recognizes the reality of resource constraints but clarifies that states have a core obligation to guarantee minimum essential levels of all rights, including the right to health, particularly to the most vulnerable populations, while working toward full realization.

Perhaps a more troubling finding in this analysis is the pervasive lack of data collection tools or indicators on migrants within national surveillance systems. In spite of four “nationally representative” surveys identified in this analysis, none of the data collected was disaggregated by nationality or immigration status. Consequently, the lack of concrete, reliable and adequate evidence and documentation on migrants in the country limits national understanding of migration opportunities and gaps and impedes efforts to address any health challenges facing migrants.

Nevertheless, this analysis also revealed some level of commitment and ongoing efforts by the

Government of Kenya to put in place policies and procedures that address migration and health in the country. Three out of the 24 documents reviewed directly target the health of migrants: the Counter Trafficking in Persons Act, the Refugee Act and the National Strategy on HIV/AIDS and STI Programming along Transport Corridors. Specifically, the Kenya Counter Trafficking in Persons Act provides for appropriate medical services for victims of trafficking, while the Refugee Act makes provision for the acceleration of refugee status application and travel documentation for medical purposes. The HIV/AIDS and STI Programming along Transport Corridors strategy is concerned with the provision of services related to HIV prevention, treatment and care along heavily trafficked transport routes.

The following strategies, guidelines and plans all recognize certain categories of migrants and address specific health needs: the National AIDS Strategic Plan; National Reproductive Health Strategy; DLTLD strategic plan and guidelines; National Malaria Strategy and guidelines; and National Guidelines for HIV/STI programs for Sex Workers. Categories of migrants mentioned in these documents include IDPs, refugees and migrant workers. Specific vulnerable migrant groups recognized include nomadic communities, transport workers, female sex workers and fishing communities. Health needs targeted vary depending on the specifics of the document; they include HIV/AIDS, TB, reproductive health and malaria.

3.2 Recommendations

The Government of Kenya, with support from its partners, including IOM, should take the lead on the following recommended action steps:

1. Include the right to health for all in the ongoing review of legislation and policies

If access to equal health care is to be achieved for all, policy documents must mention and address in some detail different needs of groups and the obstacles to accessible care. Kenya is in the process of reviewing and enacting health legislation and policies to be in line with the Constitution. These laws and policies should be specific regarding the right to health for all.

Moreover, there should be deliberate effort to include migration health where this has been omitted (such as the Public Health Act) and to clearly define the depth and scope of migrant health where this is not clear. The line ministries in which migration and health issues are housed should coordinate this review process, ensure input from all relevant stakeholders, including migrants, and coordinate discussions and programming on migrants and migrant health. The strategies should also be harmonized to align with the current constitution and other instruments that recognize the right to health for all, without discriminating against migrants.

As outlined in the framework for analysis of the inclusion of human rights of migrants in health policies, the documents should do the following:

- Support the rights of migrants with equal opportunity in receiving health care merely on the basis of health needs regardless of migration status and individually tailored services to meet their needs and choices;
- Indicate how migrants may qualify for specific benefits relevant to them;
- Support the right of migrants to participate in the decisions that affect their lives and enhance their empowerment;

- Promote the use of mainstream services by migrants;
- Recognize that migrants can be productive contributors to society;
- Ensure that services respond to the beliefs, values, gender, interpersonal styles, attitudes, cultural, ethnic or linguistic aspects of the person; and
- Support the capacity building of health workers and of the system in which they work in realizing the right to health of migrants.

2. *Ratify and domesticate relevant international treaties*

In order to realize health and human rights for all, including migrants, Kenya should ratify relevant international instruments. These include the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the 1954 Convention Relating to the Status of Stateless Persons. In line with the Constitution, all treaties to which Kenya is a party should be incorporated into national law.

3. *Collect and analyze data on migration and health*

Migration health indicators should be included in current and new national health surveillance and monitoring systems. In addition, more investment should be made in ongoing research for the purposes of planning and programming related to health for migrants.

The following indicators should be considered for inclusion:

- Geographical and internal migration characteristics, including the following: Place of birth, Place of usual residence, Place where present at time of survey, Duration of residence, Place of previous residence and Locality (e.g. urban and rural); and
- International migration characteristics, including the following: country of birth, nationality, year or period of arrival in the country, migration status, reason for migration and country of birth of parents.

4. *Improve coordination of in-country and regional interventions*

Coordination of in-country interventions should be enhanced in order to ensure improved and effective health service delivery. A clear and more localized definition of migrants in the policy documents, to allow for focused strategies that address specific health needs for migrants, is also needed. In addition, mainstreaming migrants and migrant health concerns within existing national systems and structures should take place to ease integration into the community and avoid conflict with host communities. Moreover, regional harmonization of treatment protocols and guidelines for diseases such as HIV/AIDS and TB should be completed to ensure service continuity for migrants.

Promote awareness of migrants and their right to health To raise awareness, there should be increased advocacy and sensitization of health and law enforcement personnel on relevant legislation related to migrants' right to health. IOM should improve its visibility and ensure that the organization is represented at decision-making forums to make certain that migrants' voices are heard. IOM should facilitate the coordination of migrant health activities within the country, regularly updating key stakeholders on the status of migrants and migrant health in Kenya.

5. *Disassociate migration control from health care provision*

The discourse on migration in Kenya tends to view migration as a security issue (Opata, 2012; IDIS, 2013). Although this association did not come out clearly in this analysis, research indicates that sometimes health workers are conflicted regarding their role when serving irregular migrants (IOM, 2011). There is need to disassociate the provision of health care services from policies regarding migration.

Health care providers should be guided by the health care needs and confidentiality of patients; immigration status should not override those needs. That is, medical professionals should not take on migration control tasks, such as asking for documents or checking the validity of a visa; instead, they should prioritize the patient's clinical problems. Clear guidelines on the entitlement of migrants should be provided or included in various health policies, strategies and guidelines in line with the Kenyan Constitution.

Section 4: References

ACP Observatory on Migration

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

African Development Bank (AfDB), et al.

- 2013 African Economic Outlook 2013: Structural Transformation and Natural Resources. OECD Publishing. Available at AfricanEconomicOutlook.org.

Amin, M. et al.

- 2011 EquiFrame: A Framework for Analysis of the Inclusion of Human Rights and Vulnerable Groups in Health Policies. *Health and Human Rights*, 13(2):1-20.

Clark, S.J. et al.

- 2007 Returning home to die: Circular labour migration and mortality in South Africa. *Scandinavian Journal of Public Health*, 35(3 suppl. 69):35-44.

Health and Development Networks (HDN) and IOM

- 2006 HIV and people on the move: Risk and vulnerabilities of migrants and mobile populations in Southern Africa. Summary report of the structured discussion on AF-AIDS eForum, April–August 2005. IOM, Pretoria.

Haour-Knipe, M.

- 2008 Dreams and Disappointments: Migration and Families in the Context of HIV and AIDS. Joint Learning Initiative on Children and HIV/AIDS (JLICA), Geneva.

Institute of Diplomacy and Security Studies (IDSS), University of Nairobi

- 2013 Illegal Immigrants in Kenya: A Threat to National Security. PhD student project. Abstract available at <http://idis.uonbi.ac.ke/node/442>.

International Organization for Migration (IOM)

- 2009 A Review of International Law. *International Migration Law Series No. 19, Migration and the Right to Health*. IOM, Geneva.
- 2011a An Analysis of Migration Health in Kenya. IOM, Nairobi.
- 2011b IOM Glossary of Migration. *International Migration Law, 2nd Edition, 2011*. IOM, Geneva.
- 2011c Migration and Health in SADC: A review of the Literature. IOM, Pretoria.

Mosca, D. et al.

- 2012 The importance of migrants' health for sustainable and equitable development. In: *Migration and the United Nations Post-2015 Development Agenda* (F. Laczko and L.J. Lonback, eds). IOM, Geneva.

Nagel, S.S., ed.

1999 Policy Analysis Methods. Nova Science Publishers, Hauppauge.

Nathaniel, P.

2003 Limiting the spread of communicable diseases caused by human population movement. *Journal of Rural and Remote Environmental Health*, 2(1): 23-32.

Opata, P.O.

2012 Immigration and national security: an assessment of regional immigration into Kenya using human- security as a yard stick in evaluating migrants' identity and security dynamics in Kenya. Master thesis. University of Nairobi, Kenya.

United Nations, Department of Economic and Social Affairs, Population Division (UNPD)

2009 Trends in International Migrant Stock: The 2008 Revision (United Nations database, POP/DB/MIG/Stock/Rev.2008).

United Nations Development Programme (UNDP)

2009 Human Development Report 2009. Overcoming barriers: Human mobility and development. United Nations Development Programme, New York.

United Nations High Commissioner for Refugees (UNHCR)

2013a. UNHCR Country Operations Profile: Kenya, Available at www.unhcr.org/pages/49e483a16.html.

2013b. UNHCR Global Trends 2012: Displacement, the New 21st Century Challenge. UNHCR, Geneva.

Walt, G.

2004 Health Policy: An Introduction to Process and Power. Zed Books, London.

Walt, G. and L. Gilson

1994 Reforming the health sector in developing countries: The central role of policy analysis. *Health Policy and Planning* 9(4): 353-370.

World Bank (WB)

2011 Migration and Remittances Factbook 2011, 2nd Edition. WB, Washington, D.C.

World Health Organization (WHO)

2010 World Health Statistics. WHO, Geneva.

WHO and IOM

2003 International Migration, Health & Human Rights. Health & Human Rights Publication Series Issue No. 4. WHO, Geneva.

2010 Health of Migrants: The Way Forward. Report of a WHO-IOM Global Consultation, Madrid, Spain, 3–5 March 2010. WHO, Geneva.

Annex I: National Legislative and Policy Documents

1. The Constitution of Kenya (2010)
2. The Public Health Act, 2012
3. Kenya Citizenship and Immigration Act, 2011
4. The Kenya Citizenship and Immigration Regulations, 2012
5. The Kenya Counter Trafficking in Persons Act, 2010
6. The Refugee Act, 2006
7. The National Hospital Insurance Fund Act, 1998
8. The Mental Health Act, 2012
9. The Kenya Citizens and Foreign Nationals Management Service Act (2011)
10. Kenya Vision 2030
11. The Second National Health Sector Strategic Plan (NHSSP 2005 – 2010)
12. The Kenya National AIDS Strategic Plan (2009/2010 – 2012/2013)
13. The Kenya National Reproductive Health Strategy (2009 – 2015)
14. The National Strategy on HIV/AIDS and STI Programming along Transport Corridors
15. The Division of Leprosy, Tuberculosis and Lung Disease Strategic Plan, 2011 – 2015
16. The National Malaria Strategy, 2001 – 2010
17. National Guidelines for HIV/STI programs for Sex Workers, 2010
18. The Kenya National Leprosy and Tuberculosis (NLTP) Guideline (2009)
19. The National Guidelines for the Diagnosis, Treatment and Prevention of Malaria in Kenya (2010)
20. The National Health Policy Framework (2011 – 2030)
21. The Kenya Demographic and Health Survey (KDHS 2008 – 2009)
22. The Kenya National Survey for Persons with Disabilities (2008)
23. The Kenya AIDS Indicator Survey (KAIS 2007)
24. The Kenya Integrated Household Budget Survey (KIHBS) (2005/2006)

Annex 2: International Legal Instruments

1. Preamble to the Constitution of the World Health Organization (WHO), 1946, adopted by the International Health Conference, New York, 19-22 June, entered into force 7 April 1948.
2. Universal Declaration of Human Rights (UDHR), 1948, adopted by UN General Assembly resolution 217 A (III) of 10 December 1948.
3. Convention Relating to the Status of Refugees, 1951, adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons of 28 July 1951, entered into force 22 April 1954.
4. Convention Relating to the Status of Stateless Persons, 1954, adopted by the United Nations Conference of Plenipotentiaries on the Status of Stateless Persons of 28 September 1954, entered into force 6 June 1960.
5. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965, adopted by UN General Assembly resolution 2106 (XX) of 21 December 1965, entered into force 4 January 1969.
 - a. Committee on the Elimination of Racial Discrimination General Recommendation No. 30 on the Discrimination of Non-Citizens, 2004, HRI/GEN/1/Rev. 9 (Vol. II), 1 October.
6. International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, adopted by the UN General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 3 January 1976.
 - a. Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 3 on the Nature of States Parties' Obligations (art. 2.1), 1990, E/1991/23, 14 December.
 - b. CESCR General Comment No. 14 on the Right to the Highest Attainable Standard of Health (art. 12), 2000, E/C.12/2000/4, 11 August.
 - c. CESCR General Comment No. 20 on Non-discrimination in Economic, Social and Cultural Rights (art. 2), 2009, E/C.12/GC/20, 2 July.
7. International Covenant on Civil and Political Rights (ICCPR), 1966, adopted by the UN General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976.
8. Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, adopted by the OAU Assembly of Heads of State and Government at its Sixth Ordinary Session of 10 September 1969, entered into force 20 June 1974.
9. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, adopted by UN General Assembly resolution 34/180 of 18 December 1979, entered into force 3 September 1981.
 - a. Committee on the Elimination of Discrimination against Women General Recommendation No. 24 on Women and Health (art. 12), 1999, A/54/38/Rev.1, chap. I, 5 February.
10. African Charter on Human and Peoples' Rights (ACHPR), 1981, adopted by the Organization for African Unity (OAU) on 27 June 1981, entered into force 21 October 1986.
11. Convention on the Rights of the Child (CRC), 1989, adopted by UN General Assembly resolution 44/25 of 20 November 1989, entered into force 2 September 1990.
12. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), 1990, adopted by UN General Assembly resolution 45/158 of 18 December 1990, entered into force 1 July 2003.
13. Convention on the Rights of Persons with Disabilities (CRPD), 2006, adopted by UN General Assembly resolution 61/106 of 24 January 2007, entered into force 3 May 2008.
14. World Health Assembly (WHA) Resolution 61.17 on the Health of Migrants, 2008, adopted by the 61st WHA of the World Health Organization, Geneva, 19-24 May.

Annex 3: Key Informant Discussion Guide

Respondent Name: _____

Date: _____

Government Ministry/Department/Organization: _____

Position: _____

Contact: _____

The Kenya National Consultation on Migration health held from the 4th to 6th May 2011 in Mombasa, drawing participation from the Ministry of Public Health and Sanitation (MoPHS), other government ministries, IOM, WHO and other stakeholders resolved to increase research on migration health and utilization in order to close gaps, and to ensure that migration health is mainstreamed in health and development legislation, policies, programmes and strategies. As part of the wider efforts towards this end, an analysis of national and sector legislation, policies and frameworks is ongoing. In addition, key informant interviews are being held with government officials and stakeholders, at the national and local levels to gain in-depth understanding of issues around the inequity of health care accessibility among migrants and their host communities.

A. Awareness of Migrants/ Migrant Health Issues

1. Who or which category of persons qualify to be regarded as migrants?
2. What qualifies individuals or groups of persons to be regarded as migrants?
3. What are some of the health issues faced by migrants in this community?
4. What options do migrants have when faced with health issues or needs?
 - a. General health issues.
 - b. Health issues specific to your department/organization.
5. In what ways do migrant health issues affect the host communities?
6. In what ways are migrants affected by the host communities among whom they live?

B. Policies and/or Strategies Addressing Migrant Health Needs

1. Overall, which migrant sensitive and inclusive legislation and/or policies are you aware of?
2. Are you aware of any programs that promote migrant health in the country generally? Please explain.
 - a. Generally
 - b. In your specific department/organization.
3. How sensitive are your departments' (or organizations') policies and strategies to migrant health?
4. What gaps/challenges do you or your department (or organization) face with regard to migration health?
5. What has or does your department (or organization) do to ensure equity in health care access by migrants?

C. Recommendations for the Way Forward on Migrant Health

1. What are your suggestions on addressing inequality in health care access by migrants (or improving on equal health care access by migrants)?
 - a. Generally
 - b. Specifically with relation to your department/organization.
2. In what ways can migrant health be mainstreamed in health and development legislation?
3. What policies, strategies and/or legislation would you consider amending/developing to address migrant health needs?
 - a. Generally.
 - b. In your specific department/organization.

We have come to the end of this discussion. Thank you for taking part in this.



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